

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) No. 8:20CR131
)
Plaintiff,)
)
vs.)
)
JASON L. BATES,)
) Omaha, Nebraska
Defendant.) November 16, 2021

VOLUME I
TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE BRIAN C. BUESCHER
UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

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produced with computer.

1 (At 8:47 a.m. on November 16, 2021; with counsel present;
2 the defendant NOT present:)

3 THE COURT: You may be seated.

4 We are on the record in United States of America versus
5 Jason L. Bates, Case Number 8:20CR131. Would counsel please
6 enter your appearances.

7 MS. SMITH: Good morning, Your Honor. Please enter
8 the appearance of Tessie Smith and Don Kleine on behalf of the
9 United States.

10 THE COURT: For the defense.

11 MR. SHAPIRO: For the defense, Glenn Shapiro.

12 THE COURT: Thank you very much. I will note for the
13 record that the defendant has not arrived yet. There's
14 apparently some traffic trouble today.

15 Mr. Shapiro, did you have the occasion to run into that as
16 well?

17 MR. SHAPIRO: I heard that, yes, Your Honor.

18 THE COURT: Oh, you did? Okay.

19 MR. SHAPIRO: No, I did not run into it 'cause I came
20 from Gretna straight down I-80 so I was good.

21 THE COURT: Oh, okay. All right. 'Cause I was
22 wondering why we're starting at 8:45 instead of 8:30.

23 MR. SHAPIRO: Actually, I got in the building at
24 about 8:33 'cause getting into the parking garage, there was an
25 extreme backup so my apologies.

1 THE COURT: Okay. All right. Is there any reason
2 that we cannot go to trial today, Mr. Shapiro?

3 MR. SHAPIRO: No reason I'm aware of, sir.

4 THE COURT: Okay. Ms. Smith.

5 MS. SMITH: No, Your Honor.

6 THE COURT: All right. I'm just going to note some
7 preliminary matters given the defendant is not here. If at any
8 point in time, Mr. Shapiro, you believe the defendant needs to
9 be here for some particular matter, let me know and we can
10 delay that matter until such time he is here; but -- but we're
11 just going to go over some procedural matters at this point in
12 time so...

13 Of course, the time for jury selection is going to be 20
14 minutes, opening will be 20 minutes, and closing will be 30
15 minutes.

16 I just want to talk about how long the parties anticipate
17 this trial going. We'll start with Ms. Smith on that.

18 MS. SMITH: Your Honor, I anticipate that the
19 government's case in chief will take throughout today and
20 likely into tomorrow. Hopefully not into the afternoon but
21 possibly.

22 THE COURT: Okay. And, Mr. Shapiro, you're under
23 obviously no obligation to state whether or not you intend to
24 put on a case. Do you anticipate any evidence at this point in
25 time just for planning purposes?

1 MR. SHAPIRO: Understood. I do not, Your Honor.

2 THE COURT: Okay. Given that, what I'll tell the
3 jury is this'll be anticipated to be two to three days which
4 would be today, tomorrow, and Thursday. Does anyone have a
5 problem with me suggesting that? I know sometimes people have
6 plans or other things that come up otherwise so I'll start with
7 Mr. Shapiro.

8 MR. SHAPIRO: I have no concerns with that schedule.

9 THE COURT: Okay. And from...

10 MS. SMITH: No concerns, Your Honor. Thank you.

11 THE COURT: Okay. Are there anything that -- are
12 there any stipulations ahead of trial? We'll start with
13 Ms. Smith.

14 MS. SMITH: Yes, Your Honor. There's one stipulation
15 regarding some chain of custody issues as well as how a certain
16 video was received. That stipulation has been signed and the
17 government intends to file that stipulation within the course
18 of the morning.

19 THE COURT: Okay. Given that, that will handle that
20 itself then.

21 Let's hear from Mr. Shapiro. Is there anything from your
22 end?

23 MR. SHAPIRO: No preliminary matters, Your Honor.

24 THE COURT: Okay. With regard to -- There's a
25 motion in limine from the government for an order -- that's

1 filing 46, for an order prohibiting statements or argument of
2 entrapment unless and until the record contains sufficient
3 evidence warranting an entrapment jury instruction or the
4 defendant otherwise makes a showing that such instruction will
5 be warranted.

6 I would hear a brief argument on that. I've read your
7 brief and I'll hear from Mr. Shapiro as well.

8 So, Ms. Smith, do you wish to add anything? And when you
9 argue, if you wouldn't mind standing, I'd appreciate it.

10 MS. SMITH: Your Honor, I just intend to submit the
11 matter on the brief.

12 THE COURT: Okay. And then from Mr. Shapiro.

13 MR. SHAPIRO: I would submit it as well, Your Honor.
14 We crossed this bridge a month ago --

15 THE COURT: Okay.

16 MR. SHAPIRO: -- in a similar trial so I'll submit.

17 THE COURT: And you're not going to be surprised when
18 I give the same response that I gave a month ago which is, you
19 know -- you know, at this point actually the defense has not
20 requested an entrapment instruction, but the defense is free to
21 try to put on evidence or elicit testimony that would support
22 such an introduction if they wish to, you know, seek it later.

23 I think it's unlikely at this point that the defendant
24 would be able to demonstrate entrapment to the point that it
25 would warrant an instruction, but I'm not going to make such a

1 ruling ahead of seeing the evidence, and I'm not going to
2 prohibit the defense from making any particular arguments or
3 statements short of seeing the evidence at trial.

4 So the defendant and his attorney are free to put on their
5 case with the knowledge that the entrapment instruction is
6 likely -- is unlikely to be given so it's not likely to be
7 given. So I will deny the motion in limine at this time with
8 the ability for the United States to remake the motion if they
9 so see the need.

10 So at this point in time, I just want to talk about the
11 format of the trial. We'll start at 9 a.m. each day. We're
12 going to break around noon for the day and -- for the day
13 around 4:30. We will take a morning and afternoon break for
14 Rogene.

15 Questioning will be from the -- the podium for voir dire
16 and the desk podium for the questioning of the witnesses. So
17 up here is where I'm going to have you do your voir dire so you
18 can see the entire panel. Part of the panel will be in the
19 gallery back there, part of the panel will be in the box.
20 However, when you question witnesses, I would like you to use
21 the podiums that are directly behind you.

22 I want to ask the government a question. In a trial a
23 while back, the witnesses on a similar case -- I think they're
24 the same people. We had to delay the trial because the witness
25 was not vaccinated and had a close contact. At a previous

1 trial on this, I ordered all the witnesses to wear masks at all
2 times because of that. I'm inclined to do that again given I
3 knew that these folks weren't vaccinated -- and -- and -- and I
4 think several of them were not -- causing the delay of the
5 trial.

6 I just want to give you an opportunity to have any
7 argument about that and I'll give the defense the same
8 opportunity.

9 MS. SMITH: Your Honor, at this time I'm not aware
10 whether or not any of the government's witnesses are vaccinated
11 or unvaccinated. For clarification would -- would that order
12 pertain to all witnesses or just the witnesses who we know are
13 unvaccinated?

14 THE COURT: Well, I would be fine doing it for those
15 that we just know were unvaccinated, but on the other hand, I
16 don't -- you know, I think there's some optics here --

17 MS. SMITH: Sure.

18 THE COURT: -- where you -- you know, it's a
19 little -- it's a little easier to -- to have them all wear
20 them, but on the other hand, I would be fine with that; but I
21 want to give -- hear the defense -- the opportunity to -- to
22 have -- to say what they wish to say about that as well.

23 So at this point I'll hear from Mr. Shapiro on that
24 question just because I -- these same witnesses, at least two
25 of them, I believe, I think more than that actually, we had to

1 delay a trial -- was it your trial?

2 MR. SHAPIRO: It was, Your Honor.

3 THE COURT: Okay. And you consented to the -- the --
4 the mask last time. I'm inclined to do that again. I want to
5 hear what you have to say about that.

6 MR. SHAPIRO: Judge, I have no preference. Whatever
7 the Court or the government works out is fine with the defense.

8 THE COURT: Okay. Here's what I would like. I would
9 like to know -- if there are people who are not vaccinated,
10 make them wear a mask. If you can't tell who's not vaccinated,
11 make them all wear masks, okay? So that's what I would like to
12 do.

13 Just so you all know, I'm going to have the same mask
14 policy I had with Mr. Shapiro previously. You counsel
15 cannot -- you don't have to wear masks because you're talking
16 to each other at all times and that's fine. During voir dire,
17 I'm going to have everyone in the gallery and all the -- the --
18 the jurors, the entire courtroom wearing a mask except for you
19 all 'cause you have speaking roles.

20 During the trial, the jurors will be able to not wear a
21 mask if they are vaccinated based on the honor system. My
22 staff is not going to wear masks because we're all vaccinated.

23 That's the way I'm going to handle things, you know, and
24 so that's -- that's just for you all to know so it's the same
25 as I've handled previously.

1 One thing I'll note for the record again, I don't allow
2 any speaking objections. I do just request when you make your
3 objection, state the objection and the reason for it so, you
4 know, objection, form or whatever you're going to say. You
5 know, a few words is fine. If you got -- if you need -- we
6 will take sidebars if we need to. Hopefully, we can keep them
7 to a minimum. I don't anticipate we having any issues with
8 that given how Mr. Shapiro's last trial went so I think we
9 should be okay, but that's just for the record.

10 The jury selection question, I already told you how you're
11 going to -- you're going to be up here at the podium. The jury
12 will be composed of 12 jurors with 2 additional jurors serving
13 as alternates. The 12 lowest juror numbers remaining after
14 strikes for cause and peremptory strikes will be the 12-person
15 jury.

16 The 12-person jury will be selected first with the
17 defendant receiving 10 peremptory strikes and the United States
18 receiving 6 peremptory strikes. As to the alternate jurors,
19 following the selection of the 12-person jury, each party will
20 have one additional peremptory strike during the selection of
21 the two alternate jurors. This is in accordance with Federal
22 Rule of Criminal Procedure 24(c)(4). So all potential jurors
23 will be allowed to answer questions during voir dire and are
24 eligible for exclusion by peremptory challenges.

25 Are there any questions or objections to the selection

1 process? I'll start with Ms. Smith.

2 MS. SMITH: No, Your Honor.

3 THE COURT: Mr. Shapiro.

4 MR. SHAPIRO: No objection to that process.

5 THE COURT: Okay. As to exhibits, just please ask
6 permission before publishing. And with regard to Instruction
7 No. 1, I had the instructions emailed to everyone late last
8 week, I believe. Is there any -- I do have to read
9 Instruction No. 1 at the beginning I guess early on in the
10 proceedings. So are there any objections to Instruction No. 1?
11 Ms. Smith.

12 MS. SMITH: Not from the government.

13 THE COURT: Okay. And Mr. Shapiro.

14 MR. SHAPIRO: There's no objection to 1, Your Honor.

15 THE COURT: Okay. I've -- I received the juror --
16 the proposed jury instruction request from the government and I
17 have not received any from the defense. If there are any
18 additional instructions requested, I request that they be
19 provided by the beginning of the last day of trial, so we could
20 easily be tomorrow morning so -- that's possible, so if
21 something comes up, I understand that -- if something comes up
22 that requests the jury instruction, let me know otherwise what
23 we will do in this case, we will have a jury instruction
24 conference that you'll be able to make your arguments on the
25 record as to all the instructions.

1 I'll just -- we'll get this thing going and -- get the
2 proceedings going and then I'll let you know when we'll have
3 it. It'll probably be at a noon hour or I'll tell you -- maybe
4 tomorrow morning early, we'll come in a little early and get
5 that conference done.

6 I do request that the parties stay within 10 minutes of
7 the courthouse to respond to questions, if any, and be back for
8 a verdict once the verdict is given or once the -- the case is
9 given to the jury for deliberations.

10 So -- okay. Those are the matters that I had that -- on
11 my list of things to consider.

12 Ms. Smith, is there anything else we should consider
13 before we proceed to picking a jury in this case, assuming the
14 U.S. Marshals can bring us a defendant?

15 MS. SMITH: Your Honor, if I may just briefly.
16 Because this is my first time appearing in front of you, one
17 question for clarification. After I am done presenting
18 questions to a witness and it is Mr. Shapiro's turn, do I
19 return to this seat or do I remain at the podium?

20 THE COURT: I would like you to return to that seat
21 right there so I can see you.

22 MS. SMITH: Perfect. Thank you.

23 THE COURT: Okay. So, yeah, I just like -- given
24 particularly the COVID situation, the podiums work a lot better
25 'cause everyone's got their own space and so, yeah, you --

1 (Defendant's appearance is noted.)

2 THE COURT: -- just return there and then -- and then
3 you'll return there for any redirect so --

4 MS. SMITH: Thank you.

5 THE COURT: -- so, okay.

6 I see we -- I'll just note for the record the defendant
7 has now entered the room.

8 Given the defendant is now here and I'll now give you,
9 Mr. Shapiro, any opportunity that you -- if you have any other
10 questions or anything you'd like to bring up at this point in
11 time.

12 MR. SHAPIRO: Thank you. I have no issues to address
13 at this time, Your Honor.

14 THE COURT: Okay. Given that, our preliminary
15 discussion as a matter -- for the courtesy of the defendant
16 here, we just had some procedural matters we just discussed.
17 That's what we were doing just now. So we have now discussed
18 those with counsel.

19 And at this point in time, we will take a recess until
20 such time we can get jury selection going.

21 How long do you think...

22 COURTROOM DEPUTY: They will be ready -- we have 38.
23 We have 38 ready to go.

24 THE COURT: Okay. So we'll -- they'll be brought in
25 here in what? Fifteen minutes shall we start?

1 COURTROOM DEPUTY: Yes.

2 THE COURT: Okay. It's 9 o'clock a.m. We will start
3 at 9:15 a.m. So thank you very much.

4 We are in recess until 9:15 a.m.

5 (Recess taken at 9 a.m.)

6 (Jury empaneled and sworn.)

7 THE COURT: You may be seated. And let the record
8 reflect that a jury has been selected in this case.

9 At this point in time, we are going to take a lunch break
10 and we're going to come back here at 12:35 p.m. to start the
11 trial. I want to keep this thing going to respect all of your
12 time. Before you leave, I want to remind you of the following
13 admonitions which you should keep in mind throughout this
14 trial.

15 You must not discuss this case with anyone, including the
16 other jurors, members of your family, people involved in the
17 trial, or anyone else. Do not allow anyone to discuss this
18 case with you or within your hearing. Only you have been
19 chosen as jurors in this case and only you have sworn to uphold
20 the law. No one else has been chosen to do this.

21 You should not even talk among yourselves about the case
22 before you have heard all the evidence and the case has been
23 submitted to you by me for deliberations because it may affect
24 your final decision.

25 If anyone tries to talk to you about the case, please let

1 me know about it immediately. When I say you must not discuss
2 the case with anyone, I also mean do not email, send text
3 messages, blog, or engage in any other form of written, oral,
4 or electronic communication.

5 With that, members of the jury, you are now excused for
6 lunch and must be back by 12:35 p.m. Please -- please follow
7 my courtroom deputy out.

8 (Jury out at 11:36 a.m.)

9 THE COURT: You may be seated.

10 We are now outside the presence of the jury.

11 Counsel, I intend to proceed with opening statements after
12 lunch. Is there anything that needs to be addressed outside
13 the presence of the jury prior to opening statements? Start
14 with Ms. Smith.

15 MS. SMITH: Not for the government, Your Honor.
16 Thank you.

17 THE COURT: Okay. Mr. Shapiro.

18 MR. SHAPIRO: No, Your Honor.

19 THE COURT: Okay. We will return at 12:35 p.m.
20 Thank you very much.

21 (Recess taken at 11:37 a.m.)

22 (At 12:42 p.m. on November 16, 2021; with counsel and the
23 defendant present; WITHOUT the jury:)

24 THE COURT: Counsel, is there anything we need to
25 handle before bringing in the jury for me to read Instruction

1 No. 1 and then start with opening statements? We'll start with
2 Ms. Smith.

3 MS. SMITH: Just briefly, Your Honor. Based on what
4 you indicated this morning, the government has learned there is
5 a single witness who is not vaccinated and he has been informed
6 that he needs to wear his mask.

7 THE COURT: Okay. And would you tell me who that is
8 so that I don't ask him to take his mask off.

9 MS. SMITH: Yes. That is Deputy Chad Miller.

10 THE COURT: Okay. Okay. I will -- My intention is
11 then -- as to Mr. Miller, I'll just let him remain with his
12 mask on. It may look a little funny that he didn't get asked
13 to remove his mask and everyone else did.

14 Do you have any comment on that? I intend just to proceed
15 that way.

16 MS. SMITH: That's fine, Your Honor.

17 THE COURT: Okay. Any comment from the defense about
18 that or anything else?

19 MR. SHAPIRO: No, Your Honor, across the board.

20 THE COURT: Okay. Thank you. We will now bring in
21 the jury.

22 Thank you.

23 (Jury present at 12:43 p.m.)

24 THE COURT: You all may be seated.

25 We are, of course, back on the record in United States of

1 America versus Jason L. Bates, Case Number 8:20CR131. First of
2 all, I'll just remind the jury that my policy is that if you
3 are fully vaccinated, you may remove your mask if you want to
4 while you're here at the trial. As you can see, we're all
5 spaced out now. We have space between us. But you don't have
6 to. You can wear your mask the entire trial if you wish. That
7 is totally up to you.

8 As to those in the gallery, I'm going to ask anyone in the
9 gallery to put on a mask at all times so that's my request for
10 the gallery. And as I said before, the parties who have a
11 speaking role in this matter and who are doing the work here
12 may have their mask removed. So thank you very much.

13 Ladies and gentlemen, I will now take a few moments to
14 give you some instructions about this case and about your
15 duties as jurors. At the end of the trial, I'll give you more
16 instructions. I may also give you instructions during the
17 trial. All instructions, those I give you now and those I give
18 you later, whether they are in writing or given to you orally,
19 are equally important and you must follow them all.

20 This is a criminal case brought against the defendant by
21 the United States Government. The defendant is charged with
22 attempting to persuade, induce, or entice a minor to engage in
23 sexual activity. That charge is set forth in what is called an
24 Indictment which I will ask the government attorney to read for
25 you now.

1 MR. KLEINE: Thank you, Your Honor.

2 Your Honor, in the matter of the United States District
3 Court for the District of Nebraska, in the matter of United
4 States of America versus Jason L. Bates, the grand jury charges
5 at Count I: Beginning on or about March 30th, 2020, through on
6 or about April 6th, 2020, in the District of Nebraska and
7 elsewhere, the defendant, Jason L. Bates, did use any facility
8 of interstate and foreign commerce to knowingly attempt to
9 persuade, induce, and entice an individual who had not attained
10 the age of 18 years to engage in prostitution and sexual
11 activity for which the defendant could be charged with a
12 criminal offense, in violation of Title 18, United States Code,
13 Section 2422(b).

14 THE COURT: Ladies and gentlemen, you should
15 understand that an indictment is simply an accusation. It is
16 not evidence of anything. The defendant has pleaded not guilty
17 and is presumed to be innocent unless and until proved guilty
18 beyond a reasonable doubt.

19 It will be your duty to decide from the evidence whether
20 the defendant is guilty or not guilty of the crime charged.
21 From the evidence, you will decide what the facts are. You're
22 entitled to consider the evidence in the light of your own
23 observations and experiences in life. You may use reason and
24 common sense to draw deductions or conclusions from facts which
25 I have been -- which have been established by the evidence.

1 You will then apply those facts to the law which I give you in
2 these and my other -- and in my other instructions and in that
3 way reach your verdict. You are the sole judges of the facts,
4 but you must follow my instructions whether you agree with them
5 or not. You have taken an oath to do so.

6 Do not allow sympathy or prejudice to influence you. The
7 law demands of you a just verdict, unaffected by anything
8 except the evidence, your common sense, and the law as I give
9 it to you.

10 You should not take anything I may say or do during the
11 trial as indicating what I think of the evidence or what I
12 think your verdict should be.

13 Finally, please remember that only this defendant, not
14 anyone else, is on trial here, and that this defendant is on
15 trial only for the crime charged, not for anything else.

16 I have mentioned the word "evidence." "Evidence" includes
17 the testimony of witnesses, documents, and other things
18 received as exhibits, any facts that have been stipulated, that
19 is, formally agreed to by the parties, and any facts that have
20 been judicially noticed, that is, facts that I say you may but
21 are not required to accept as true even without evidence.

22 Certain things are not evidence. I will list those things
23 for you now:

24 Statements, arguments, questions, and comments by lawyers
25 representing parties in this case are not evidence.

1 Objections are not evidence. Lawyers have a right to
2 object when they believe something is improper. You should not
3 be influenced by the objection. If I sustain an objection to a
4 question, you must ignore the question and must not try to
5 guess what the answer might have been.

6 Testimony that I strike from the record or tell you to
7 disregard is not evidence and must not be considered.

8 Anything you see or hear about this case outside the
9 courtroom is not evidence unless I specifically tell you
10 otherwise during the trial.

11 Furthermore, a particular item of evidence is sometimes
12 received for a limited purpose only. That is, it can be used
13 by you only for one particular purpose and not for any other
14 purpose. I will tell you when that occurs and instruct you on
15 the purposes for which the item can and cannot be used.

16 Finally, some of you may have heard the terms "direct
17 evidence" and "circumstantial evidence." You are instructed
18 that you should not be concerned with those items -- or those
19 terms. The law makes no distinction between direct and
20 circumstantial evidence. You should give all evidence the
21 weight and value you believe it is entitled to receive.

22 In deciding what the facts are, you may have to decide
23 what testimony you believe and what testimony you do not
24 believe. You may believe all of what a witness said, or only
25 part of it, or none of it.

1 In deciding what testimony of any witness to believe,
2 consider the witness's intelligence, the opportunity the
3 witness had to have seen or heard the things testified about,
4 the witness's memory, any motives that witness may have for
5 testifying a certain way, the manner of the witness while
6 testifying, whether that witness said something different at an
7 earlier time, the general reasonableness of the testimony, and
8 the extent to which the testimony is consistent with other
9 evidence that you believe.

10 At the end of the trial, you must make your decision based
11 on what you recall of the evidence. You will not have a
12 written transcript to consult. You must pay close attention to
13 the testimony as it is given.

14 If you wish, however, you may take notes to help you
15 remember what witnesses said. My courtroom deputy will provide
16 you each with a pad of paper and a pen or a pencil.

17 If you do take notes, please keep them to yourself until
18 you and your fellow jurors go to the jury room to decide the
19 case and do not let note-taking distract you so that you do not
20 hear other answers by the witness. Remember, it is your own
21 individual responsibility to listen carefully to the evidence.

22 At each recess, leave your notes in the jury room. When
23 you leave at night, they will be secured and will not be read
24 by anyone.

25 I do not allow jurors to ask or present written questions

1 to any witnesses. In other words, I do not allow jurors to
2 question witnesses either directly or indirectly.

3 During the trial, it may be necessary for me to talk with
4 the lawyers out of the hearing of the jury, either by having a
5 bench conference here while the jury is present in the
6 courtroom, or by calling a recess. Please understand that
7 while you are waiting, we are working. The purpose of these
8 conferences is to decide how certain evidence is to be treated
9 under the rules of evidence and to avoid confusion and error.
10 We will, of course, do what we can to keep the number and
11 length of these conferences to a minimum.

12 To ensure fairness, you as jurors must obey the following
13 rules:

14 First, do not talk or communicate among yourselves about
15 this case or about anyone involved with it until the end of the
16 case when you go to the jury room to decide your verdict.

17 Second, do not talk with anyone else about this case or
18 about anyone involved with it until the trial has ended and you
19 have been discharged as jurors. You must leave your cell
20 phones, smartphone, iPhone, tablet, computer, or any other
21 wireless communication device in the jury room during the trial
22 and may only use them during breaks. You will have to turn
23 those devices "off" in the jury room during your deliberations.

24 Third, when you are outside the courtroom, do not let
25 anyone tell you anything about the case or about anyone

1 involved with it until the trial has ended and I have accepted
2 your verdict and discharged you as jurors. If someone should
3 try to talk to you about the case during the trial, please
4 report it to my courtroom deputy.

5 Fourth, during the trial, you should not talk with or
6 speak to any of the parties, lawyers, or witnesses involved in
7 this case. You should not even pass the time of day with any
8 of them. It is important not only that you do justice in this
9 case but that you also give the appearance of doing justice.
10 If a person from one side of the lawsuit sees you talking to a
11 person from another side, even if it is simply to pass the time
12 of day, an unwarranted and unnecessary suspicion about your
13 fairness might be aroused. If any lawyer, party, or witness
14 does not speak to you when you pass in the hall, ride the
15 elevator or the like, it is because they are not supposed to
16 talk to you or visit with you.

17 Fifth, it may be necessary for you to tell your family,
18 close friends, teachers, coworkers, or employer about your
19 participation in this trial. You can explain when you are
20 required to be in court and can warn them not to ask you about
21 this case, tell you anything they know or think they know about
22 this case, or discuss this case in your presence. You must not
23 communicate with anyone or post information about the parties,
24 witnesses, participants, charges, evidence, or anything else
25 related to this case. You must not tell anyone anything about

1 the jury's deliberations in this case until after I accept your
2 verdict or until I give you specific permission to do so.

3 If you discuss the case with someone other than the other
4 jurors during deliberations, it could create the perception
5 that you have clearly decided the case or that you may be
6 influenced in your verdict by their opinions. That would not
7 be fair to the parties and it may result in the verdict being
8 thrown out and the case having to be retried.

9 During the trial while you are in the courthouse and after
10 you leave for the day, do not provide information to anyone by
11 any means about this case. For example, do not talk
12 face-to-face or use any electronic device or media, such as the
13 telephone, cell phone, or smartphone, computer, the Internet,
14 any Internet service, any text or instant messaging service,
15 any Internet chat room, blog, or website such as Facebook,
16 Snapchat, Instagram, YouTube or Twitter, or any other way to
17 communicate to anyone any information about this case until I
18 accept your verdict.

19 Sixth, do not do any research on the Internet, in
20 libraries, in the newspapers, or in any other way or make any
21 investigation about this case on your own. Do not visit or
22 view any place discussed in this case and do not use the
23 Internet, Google Maps, or any other program or device to search
24 for or to view any place discussed in the testimony. Also, do
25 not research any information about this case, the law, or the

1 people involved, including the parties, the witnesses, the
2 lawyers, or the judge.

3 Seventh, do not read any news stories or articles in
4 print, or on the Internet, or in any blog about the case or
5 about anyone involved with it, or listen to any radio or
6 television reports about the case or about anyone involved with
7 it. In fact, until the trial is over, I suggest that you avoid
8 reading any newspapers or news journals at all and avoid
9 listening to any television or radio newscasts at all. I do
10 not know whether there might be any news reports of this case,
11 but if there are, you might inadvertently find yourself reading
12 or listening to something before you could do anything about
13 it. If you want, you can have your spouse or a friend clip out
14 any stories and set them aside to give you after the trial is
15 over. I can assure you, however, that by the time you have
16 heard the evidence in this case, you will know what you need to
17 return a just verdict.

18 The parties have a right to have the case decided only on
19 evidence they know about and that has been introduced here in
20 court. If you do some research or investigation or experiment
21 that we do not know about, then your verdict may be influenced
22 by inaccurate, incomplete, or misleading information that has
23 not been tested by the trial process, including the oath to
24 tell the truth and by cross-examination.

25 All of the parties are entitled to a fair trial rendered

1 by an impartial jury, and you must conduct yourselves so as to
2 maintain the integrity of the trial process. If you decide a
3 case based on information not presented in court, you will have
4 denied the parties a fair trial in accordance with the rules of
5 this country and you will have done an injustice. It is very
6 important that you abide by these rules. Remember, you have
7 taken an oath to abide by these rules and you must do so.

8 Eighth, do not make up your mind during the trial about
9 what the verdict should be. Keep an open mind until after you
10 have gone to the jury room to decide the case and you and your
11 fellow jurors have discussed the evidence.

12 The trial will proceed in the following manner:

13 First, the government will make an opening statement.
14 Next, the defendant's attorney may, but does not have to, make
15 an opening statement. An opening statement is not evidence but
16 is simply a summary of what the attorney expects the evidence
17 to be.

18 The government will then present its evidence and counsel
19 for the defendant may cross-examine. Following the
20 government's case, the defendant may, but does not have to,
21 present evidence, testify, or call other witnesses. If the
22 defendant calls witnesses, the government may cross-examine
23 them.

24 After presentation of the evidence is completed, the
25 attorneys will make their closing arguments to summarize and

1 interpret the evidence for you. As with opening statements,
2 closing arguments are not evidence. The Court will instruct
3 you further on the law. After that, you will retire to
4 deliberate on your verdict.

5 Members of the jury, now the parties will proceed with
6 their opening statements. I remind you that these statements
7 are not evidence but simply what the parties expect the
8 evidence to show. Each side will have 20 minutes. The
9 attorney for the government will begin.

10 Ms. Smith, you may proceed.

11 MS. SMITH: Thank you.

12 THE COURT: I will remind those sitting in the
13 gallery, all members of the gallery must have their masks on at
14 all times with no exceptions.

15 Thank you.

16 (Opening statements were given.)

17 THE COURT: Ladies and gentlemen, the government is
18 going to begin presenting evidence in the time that we have
19 remaining today. With that, you may call your first witness,
20 Ms. Smith.

21 MS. SMITH: Thank you, Your Honor. The government
22 calls Douglas County Sheriff's Office Deputy Charles Miller,
23 Jr.

24 THE COURT: Mr. Miller, you may come up here, stand
25 next to the witness chair, and at that point in time, the

1 courtroom deputy will swear you in.

2 THE WITNESS: Okay.

3 COURTROOM DEPUTY: Please state your full name for
4 the record and spell your full name.

5 THE WITNESS: Chad Miller, C-h-a-d M-i-l-l-e-r.

6 CHAD MILLER, PLAINTIFF'S WITNESS, SWORN

7 THE COURT: You may be seated.

8 THE WITNESS: Thank you.

9 THE COURT: Please proceed, Ms. Smith.

10 MS. SMITH: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Good afternoon, Deputy Miller.

14 A. Afternoon.

15 Q. Can you tell the jury how you're currently employed?

16 A. Yes. I'm a deputy with the Douglas County Sheriff's
17 Office.

18 Q. And how long have you been in law enforcement in general?

19 A. Fifteen years.

20 Q. Okay. And how long with the Deputy -- or, excuse me,
21 Douglas County Sheriff's Office?

22 A. About 15 years.

23 Q. What was your assignment previous that?

24 A. Well, my current assignment or what did I do prior to
25 being a deputy or...

1 Q. Yes.

2 A. Prior to being a deputy, I worked at Boys Town for
3 approximately seven years as a family teacher.

4 Q. Are you also part of an FBI task force?

5 A. Yes.

6 Q. Can you tell the jury a little bit about that?

7 A. Yes. So in the Douglas County Sheriff's Office, I'm
8 assigned to our criminal investigations division, and my
9 full-time assignment is the FBI Child Exploitation and Human
10 Trafficking Task Force.

11 Q. And what are some of your duties as part of that task
12 force?

13 A. To investigate crimes involving child exploitation, sex
14 trafficking, child abuse, like sexual abuse, images and videos
15 of children.

16 Q. Have you received any specialized training related to
17 investigations of prostitution or sex trafficking crimes?

18 A. Yes.

19 Q. Can you discuss a little bit of that training.

20 A. Sure. So our basic investigative training would start at
21 the academy, and specific to sex trafficking and child
22 exploitation, I've had training through the FBI's violent
23 crimes unit, training with their online covert employee program
24 which is working online undercover. I've had training through
25 Project Harmony, through Boys Town, as well as Homeland

1 Security and St. Thomas School of Law.

2 Q. So during all of your time as part of this task force and
3 as a deputy with the Douglas County Sheriff's Office, have you
4 personally had contact with persons involved in sex
5 trafficking?

6 A. Yes.

7 Q. Can you explain for the jury, what is sex trafficking?

8 A. Sex trafficking is when somebody is recruited or enticed
9 or solicited into -- to engage in a commercial sex act.

10 Q. And are those people always adults?

11 A. They're not always adults. Often they're minors.

12 Q. And are those people always doing it of their own
13 volition?

14 A. No.

15 Q. Can you talk about that a little bit.

16 A. Yes. With sex trafficking where an adult is being
17 victimized, then we're going to look for elements of force,
18 fraud, or coercion. In sex trafficking a minor, so if we have
19 somebody under 18 that is being trafficked, they cannot consent
20 to work in prostitution; and so you wouldn't need those
21 elements of force, fraud, or coercion. Just the mere fact that
22 they're engaging in a commercial sex act in exchange for
23 something of value would be sex trafficking of a minor.

24 Q. Okay. Are there any particular concerns when it comes to
25 a minor being sex-trafficked?

1 A. Yes.

2 Q. Can you describe those?

3 A. Well, a minor often is vulnerable to trafficking just by
4 the mere fact that they're a child and it's very -- it's risky,
5 I guess. Many times children that are trafficked are people
6 that have been victimized in other ways in their life or
7 reported missing.

8 Q. Have you been involved in any undercover investigations
9 targeting the sex trafficking of minors in Omaha, Nebraska?

10 A. Yes.

11 Q. Why do you engage in undercover investigations rather
12 than, say, patrolling the streets or responding complaints or
13 trying to find -- or minors in that way?

14 A. There's multiple ways that we do try to address sex
15 trafficking of minors. One of the reasons we do undercover
16 investigations is because really the world of commercial sex
17 and prostitution and areas where minors are trafficked, it's
18 just kind of a -- really like a dark underground world, kind of
19 its own world; and in order for us to identify minors that are
20 being trafficked or identify traffickers or people in our
21 community that would purchase a minor for sex, we need to
22 operate in that same underground capacity; and so we use
23 undercover investigations to do that.

24 Q. So just to clarify, this isn't the only way that you
25 investigate this sort of crime.

1 A. Correct.

2 Q. There are also efforts being taken to actively seek out
3 and find actual minors who are being trafficked.

4 A. Correct.

5 Q. Okay. In your undercover operations, why is an undercover
6 officer used instead of a real child?

7 A. We wouldn't want to place a child in a situation that
8 could be dangerous for them or even a matter of engaging in
9 text conversations with somebody that wants to purchase sex.
10 We would not want to subject a child to the sexual
11 conversation.

12 Q. And I don't -- I'm not certain if we've covered this
13 earlier. Have you had specific training on how to work as an
14 undercover officer?

15 A. Yes.

16 Q. Now, were you employed with the Douglas County Sheriff's
17 Office and part of the FBI task force in March of 2020?

18 A. Yes.

19 Q. Were you involved in a prostitution investigation between
20 approximately March 30th and April 6th of 2020?

21 A. Yes.

22 Q. Can you describe how that investigation began.

23 A. Yes. It began by posting an ad for prostitution on a site
24 that's commonly used for the sale of sex and pretty heavily
25 used in the Omaha area called skipthegames.com.

1 Q. Okay. So Skip the Games is a website known for
2 prostitution. Does it have any other purposes?

3 A. No.

4 Q. Okay. Have you used the website Skip the Games in these
5 types of investigations previously?

6 A. Yes.

7 MS. SMITH: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 BY MS. SMITH:

10 Q. Deputy Miller, I've handed you what's been marked as
11 Government Exhibit 1. Do you recognize this exhibit?

12 A. Yes.

13 Q. What is it?

14 A. This would be like a screenshot of the home page of Skip
15 the Games.

16 Q. Does this exhibit fairly and accurately reflect the home
17 page of the Skip the Games website where you posted this ad in
18 March of 2020?

19 A. Yes.

20 MS. SMITH: Your Honor, at this time I would move to
21 admit Government Exhibit 1.

22 MR. SHAPIRO: No objection to 1, Your Honor.

23 THE COURT: Exhibit 1 is admitted.

24 MS. SMITH: May I approach?

25 THE COURT: You may.

1 MS. SMITH: Your Honor, may I have permission to
2 publish Government Exhibit 1?

3 THE COURT: You may.

4 BY MS. SMITH:

5 Q. So again, Deputy Miller, this is the home page of the Skip
6 the Games website?

7 A. Correct.

8 Q. And it appears that at the top of the page, there are a
9 few different cities listed. Is that where a person seeking
10 services of a prostitute would click to find their individual
11 city?

12 A. Yes. In that area or in that area right above it as well.

13 Q. Okay. And it appears that there's a ring box but instead
14 of a ring, there's a condom inside it.

15 A. Correct.

16 Q. I want to turn your attention to the ad you created in
17 March of 2020.

18 MS. SMITH: Your Honor, may I approach the witness
19 and have continuing permission to do so?

20 THE COURT: You may.

21 MS. SMITH: Thank you.

22 BY MS. SMITH:

23 Q. Deputy Miller, I've handed you what's been marked as
24 Government Exhibit 2. Do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. This is a screenshot of the undercover ad that I posted.

3 Q. Okay. Is this a fair and accurate copy of the
4 advertisement you created in March of 2020?

5 A. Yes.

6 MS. SMITH: Your Honor, I would move to admit this
7 exhibit at this time and also move to publish.

8 THE COURT: Okay.

9 MR. SHAPIRO: No objection to 2, Your Honor.

10 THE COURT: Exhibit 2 is admitted.

11 MS. SMITH: And now I move to publish.

12 THE COURT: Okay. Please do so.

13 (Exhibit 2 was displayed.)

14 MS. SMITH: Kathy, can you focus in on the title of
15 the page.

16 BY MS. SMITH:

17 Q. Deputy Miller, how was this advertisement titled?

18 A. KITTY Loves to PURRRR.

19 Q. Okay. And are there photographs of the purported minor on
20 this page?

21 A. Yes.

22 Q. Can you describe those photographs.

23 A. Yes. There's two photographs of her face. One there on
24 the upper left with the glasses and then the teddy bear ears,
25 and then one in front of the lockers with glasses and teddy

1 bear ears, and that is a female Douglas County sheriff's
2 deputy.

3 Q. Okay. And it appears that the animal filter is somewhat
4 obscuring her face. Is that --

5 A. Correct.

6 Q. Okay. Is there an age listed on this page?

7 A. Yes.

8 MS. SMITH: Hang on one second.

9 BY MS. SMITH:

10 Q. And what does it state the age is?

11 A. Nineteen years old.

12 Q. Now, you've stated you've used this web page or, excuse
13 me, this website in your previous investigations. Is there a
14 minimum age that can be listed on this website?

15 A. Yes, 19.

16 Q. And what happens if someone creates an advertisement and
17 puts an age less than 19?

18 A. It won't post the ad or it'll take the ad down.

19 Q. Okay. And what about if a person posts an ad and it says
20 they're 19 at the top of the page but then somewhere in the
21 body of the advertisement they indicate they're younger
22 than 19?

23 A. Then it would take the ad down.

24 Q. Now, turning towards the middle of this exhibit, are there
25 words that describe the person being advertised?

1 A. Yes.

2 Q. What are some of those words?

3 A. And are you focusing -- Well, so if you start at the top
4 I guess where it kind of does the biological description, it
5 says that it's a Caucasian female that sees men, that she is --
6 her breasts are small and petite and natural, that her grooming
7 down under is shaved, it lists a height and weight there of 5-1
8 to 5-3 and 119 pounds, no piercings, no tattoos.

9 Q. Now, based on your training and experience, are there
10 words that tend to be used in these advertisements when the
11 person being advertised is actually a minor?

12 A. Yes.

13 Q. And what are some of those words?

14 A. They could be words that would just indicate a younger
15 body or a younger person. So it could be things like perky, it
16 could be things like petite or firm. Sometimes you might see
17 daddy's girl or schoolgirl.

18 Q. Can you point out some of those names [*sic*] being used on
19 this advertisement.

20 A. Well, in the first line, it says, "I'm a perky girl..."
21 The second line, it says, Tight -- "so tasty and tight."

22 Q. And then in addition, as you previously described, when it
23 talks about her breast size, did it say small?

24 A. It did.

25 Q. And it also had a weight of 119 pounds?

1 A. Correct.

2 Q. Okay. Now, there appear to be some -- some abbreviations
3 on this page. Are there common code words used in sex
4 trafficking or prostitution?

5 A. Yes.

6 Q. Okay. Why are code words used?

7 A. Code words are typically used to try to circumvent law
8 enforcement and then they gradually just kind of become part of
9 the culture.

10 Q. Okay. And so if code words are being used, is it
11 something that's commonly known by the women who are being sold
12 for sex?

13 A. Yes.

14 Q. And would those code words also be known by individuals
15 who frequently purchase sex?

16 A. Yes.

17 Q. Now, on this page, for example, there appears to be a few
18 code words or abbreviations. Can you tell the jury what qv
19 means?

20 A. Qv would be like a quick visit, and that's referring to
21 the amount of time that's being purchased which would typically
22 be less than 30 minutes, 15 to 20 minutes, and commonly would
23 include like a quick sex act.

24 Q. And so on this advertisement, it says 80qv. What does the
25 80 mean?

1 A. \$80.

2 Q. Okay. And then underneath that we see 120hh. What does
3 that mean?

4 A. That would mean \$120 for a half hour.

5 Q. Okay. And under that 200hr.

6 A. \$200 for an hour.

7 Q. Okay. There's a line on here that says "Available for"
8 and then it has a check Incall and then the word "Outcall."
9 Are those also code words?

10 A. Yes.

11 Q. What does those words mean?

12 A. Incall would mean that the sex buyer is going to travel to
13 the location of the person being sold for sex. And outcall
14 means the person being sold for sex would go to the sex buyer's
15 location.

16 Q. And now I want to touch on something. You keep using the
17 word women who are sold for sex. Is that synonymous with the
18 word prostitute?

19 A. Yes.

20 Q. And is that a term that you might use to describe a
21 prostitute because as the phrase implies, it's a woman who is
22 being sold, not selling herself?

23 A. Correct.

24 Q. Okay. Now, this advertisement appears to list a phone
25 number. Do you recognize the phone number on there?

1 A. Yes.

2 Q. How do you recognize that phone number?

3 A. That was the undercover phone number I was using.

4 Q. Okay. And it says "Text Me." So any person responding to
5 this ad would have text you if they were interested in this
6 individual?

7 A. Correct.

8 MS. SMITH: Thank you, Kathy.

9 BY MS. SMITH:

10 Q. So did you receive any responses to this advertisement?

11 A. Yes. Many.

12 Q. Well, more specifically did you receive a message from a
13 person with the phone number 402-218-8951?

14 A. Yes.

15 Q. Okay. And was that a text message?

16 A. Yes.

17 Q. When did you receive that message?

18 A. Approximately 7:34 a.m. on March 30th.

19 Q. Did you respond right away?

20 A. I don't recall if I responded right away.

21 Q. Okay. But at some point, did you engage in a conversation
22 with this person?

23 A. Yes.

24 Q. And was that conversation via text message?

25 A. Yes.

1 Q. For at least a portion of this conversation, were you
2 texting with the person while you were located here in Omaha,
3 Nebraska?

4 A. Yes.

5 Q. Did you at some point in time determine who you were
6 texting with?

7 A. Yes.

8 Q. How did you do that?

9 A. Typically we would run the phone number to determine
10 whether it was -- belonged to an actual carrier like U.S.
11 Cellular, Verizon, whoever it might be, and then we run it
12 through a law enforcement database, and then through that I'm
13 able to see if there is a name attached to that phone number,
14 and then I did get a name back on this phone number, and so
15 then I ran that back through our Nebraska Criminal Justice
16 Information System and was able to ID the person that way.

17 Q. Okay. So what did you learn about the person who owned
18 that phone number ending in 8951?

19 A. That his name was Jason Bates.

20 Q. And because you looked up additional information, did you
21 learn his age?

22 A. Yes.

23 Q. How old was he on March 30th of 2020?

24 A. I believe he was 48 years old.

25 Q. Did you also learn what kind of vehicle he drove?

1 A. Yes.

2 Q. And what kind of vehicle was that?

3 A. It was an early 2000, I think maybe 2002 red Jeep Liberty.

4 Q. Did the -- did this vehicle have special license plates as
5 well?

6 A. It did. It had a Nebraska license plate that said R8DERS.

7 Q. Okay.

8 MS. SMITH: Your Honor, may I have permission to
9 approach?

10 THE COURT: You may.

11 MS. SMITH: Thank you.

12 BY MS. SMITH:

13 Q. Deputy Miller, I've handed you what's been marked as
14 Government Exhibit 3. Do you recognize this exhibit?

15 A. Yes.

16 Q. What is this exhibit?

17 A. A copy of the screenshots of the text messages between the
18 undercover phone number and the phone number ending in 8951.

19 Q. And whose phones are these screenshots from?

20 A. These are screenshots from my undercover phone.

21 Q. Okay. Do these photos fairly and accurately depict the
22 entire conversation between your undercover phone and the phone
23 number listed as 402-218-8951?

24 A. Yes.

25 MS. SMITH: Your Honor, at this time I would move to

1 admit Government Exhibit 3.

2 MR. SHAPIRO: No objection to 3, Your Honor.

3 THE COURT: Exhibit 3 is admitted.

4 MS. SMITH: May I approach?

5 THE COURT: You may.

6 MS. SMITH: And, Your Honor, at this time I would
7 move to publish Exhibit 3.

8 THE COURT: You may.

9 BY MS. SMITH:

10 Q. Now, Deputy Miller, I know the conversation in this case
11 lasted several days. What was the nature of the conversation?

12 A. The nature of the conversation was negotiating a price in
13 exchange for sex.

14 Q. Now, looking at the first page of Exhibit 3, how does the
15 conversation start?

16 A. The conversation starts with Mr. Bates texting "Hey."

17 Q. Okay. And at some point after these pleasantries, what
18 does he ask then?

19 A. Was looking for some company this evening.

20 Q. And how did she respond?

21 A. "I can only do day when my mom's at work."

22 Q. So it appears she's turning him down?

23 MR. SHAPIRO: Objection, leading.

24 THE COURT: Sustained.

25 MS. SMITH: Kathy, can we go to page 2.

1 BY MS. SMITH:

2 Q. How does he respond after she says that?

3 A. "Ok well maybe tomorrow then. What's the donation."

4 Q. Now, we spoke of code words. Is the word "donation," does
5 that have any specific meaning?

6 A. Yes.

7 Q. What does that mean?

8 A. Typically in the commercial sex industry, they'll use the
9 word "donation" to try to make it appear to law enforcement
10 that they don't have to pay money in exchange for the sex.
11 It's just if they want to donate money in exchange for the sex.

12 Q. So just to see that I'm understanding that correctly,
13 that's a way to make the transaction appear legal?

14 A. Correct.

15 Q. Okay. How did she respond to his question?

16 A. "How much time?"

17 Q. And then what does she say after that, after he says "Hhr
18 or hr"?

19 A. She says 120 or 200.

20 Q. So that would have been the time, 120 for half an hour of
21 her time or 200 for an hour?

22 A. That's correct.

23 Q. Okay. How does he respond next?

24 A. By asking her if she parties.

25 MS. SMITH: Kathy, can we go to page 3.

1 For the record, we are now looking at Exhibit No. 3 on
2 page 3.

3 BY MS. SMITH:

4 Q. How does she respond to his question about partying?

5 A. "I can depending on what, cant be fucked up when my mom
6 gets home."

7 Q. So, again, she's mentioning her mother?

8 A. Correct.

9 Q. What does he -- what does he say in response?

10 A. "Smoke some ice."

11 Q. Now, based on your training and experience as a law
12 enforcement officer, do you know what the word "ice" means?

13 A. Typically, it would refer to methamphetamine.

14 Q. So he's asking her to party and smoke some meth with him.

15 A. Correct.

16 Q. And how does she respond?

17 A. That she's never tried it, but she studied it in school
18 this year and it scares her.

19 Q. And what does he say?

20 A. That it's not bad. It just keeps you alert and awake, and
21 he'd have to see if he can come up with that much, that things
22 are tight with the virus.

23 Q. So as they continue discussing methamphetamine, she
24 mentions school.

25 A. Correct.

1 Q. And he continues to indicate that he wants to do
2 methamphetamine.

3 A. Correct.

4 Q. Okay.

5 MS. SMITH: Kathy, can we go to page 4 of Exhibit 3.

6 BY MS. SMITH:

7 Q. And, finally, how does she respond regarding this
8 methamphetamine discussion?

9 A. That "maybe it would help me stay awake since school is
10 online now."

11 Q. And does he appear to agree with her in his next line?

12 A. Yes.

13 Q. And does that appear to be the end of their conversation
14 on March 30th of 2020?

15 A. Yes.

16 Q. Now, did they continue messaging the next day?

17 A. Yes.

18 Q. And who reached out to whom first?

19 A. Mr. Bates -- Mr. Bates reached out to her.

20 Q. Okay. And what does he say when he does reach out to her?

21 A. "Missed u today. What times during the day are u
22 available?"

23 Q. So he's again trying to meet with her?

24 A. Correct.

25 MS. SMITH: Go to page 5, please.

1 For the record, we're now looking at Exhibit 3, page 5.

2 BY MS. SMITH:

3 Q. It appears that that was the last part of the conversation
4 on March 31st. Who initiates the conversation on April 1st?

5 A. Mr. Bates.

6 Q. Okay. So despite her lack of response, he continued
7 initiating contact.

8 MR. SHAPIRO: Object to the form of the question.

9 THE COURT: One moment. I'll sustain it on form.

10 BY MS. SMITH:

11 Q. Did he continue initiating contact each day?

12 A. Yes.

13 Q. Does she provide a response on April 1st?

14 A. Yes.

15 Q. And reading through the page, page 5, how does she
16 respond?

17 A. She says, "Hey, maybe this afternoon."

18 Q. All right. And then moving forward what does he say?

19 A. "What's the latest available."

20 Q. Okay. And then her message in response.

21 A. "Nothing more today, my mom is coming home early. Can u
22 do mornings, she leaves for work at 9."

23 Q. So on April 1st she says she can't meet with him.

24 A. That's correct.

25 Q. And she again says it's because of her mother.

1 A. Correct.

2 Q. Okay. And how does he respond to that?

3 A. "Ya, I'll text u tomorrow morning."

4 Q. Okay. Then what does she say?

5 A. "Okay, I'll hafta meet u somewhere I can walk cuz Im not
6 old enough to drive yet, text after 9."

7 MS. SMITH: Kathy, can we now go to page 6.

8 For the record, we are now looking at Exhibit 3, page 6.

9 BY MS. SMITH:

10 Q. How does he respond when she says that she's not old
11 enough to drive?

12 A. "I don't go to ur house."

13 Q. So does he appear to react to her mentioning that she's
14 not old enough to drive?

15 A. No.

16 Q. He -- And how -- how does the conversation move on from
17 there?

18 A. When he asks about going to her house, she responds, "No I
19 can meet u somewhere close I can walk, car or hotel is okay,
20 what is ur age?"

21 Q. Okay. And then throughout the rest of the page, do
22 they --

23 A. Oh -- sorry.

24 Q. Throughout the rest of the page, do they discuss the area
25 of town?

1 A. Yes.

2 Q. Okay.

3 MS. SMITH: Kathy, can we move to page 7.

4 BY MS. SMITH:

5 Q. We're now on page 7 of Exhibit No. 3. When they're
6 discussing about being out west, does she again mention
7 schooling?

8 A. Yes. She said she lives close to Millard North High
9 School, that she walks there for school.

10 Q. So she's indicating she's a high schooler?

11 A. Correct.

12 Q. How does he respond to that?

13 A. Says "Your fairly close I'm by west."

14 Q. So does he appear to make any comment about the fact that
15 she said she was in high school?

16 MR. SHAPIRO: I'm going to object. The exhibit in
17 evidence speaks for itself.

18 THE COURT: That is sustained.

19 BY MS. SMITH:

20 Q. Who ends the conversation on April 1st?

21 A. She ends the conversation asking age and hour or half
22 hour.

23 Q. And when he didn't respond, did she pester him or try to
24 contact him again?

25 A. No.

1 Q. On April 2nd, who initiated the conversation?

2 A. Mr. Bates.

3 Q. What does he say?

4 A. "Hey just verifying you are 19 right? I would hate not to
5 be able to see you if so so please tell me u are 19."

6 MS. SMITH: Kathy, can we move to page 8, please.

7 BY MS. SMITH:

8 Q. Based on the time stamps of those two messages, does it
9 appear that they were sent in rapid succession?

10 A. Yes.

11 Q. And the please tell me you're 19, does that seem like he's
12 a bit desperate?

13 MR. SHAPIRO: Objection, speculation.

14 THE COURT: Sustained.

15 BY MS. SMITH:

16 Q. How does she respond?

17 A. She says, "I'm 15, I have to put 19 in the ad or it takes
18 it down. Thats why I told u Im not old enough to drive so I
19 dont lie to people."

20 Q. And how does he respond to that?

21 A. "Know your lying you're 19! U have to tell me ur 19. We
22 can meet and talk about it if u like. When are u free."

23 Q. Based on your training and experience in handling these
24 types of cases, do you often see people seeking sex services
25 that ask the prostitute whether or not they're old enough?

1 A. Typically, they're not going to ask that specifically
2 unless they think they're dealing with a minor.

3 Q. Now, at this point, they've been communicating since
4 March 30th so about three days.

5 A. Correct.

6 Q. And pursuant to the prior messages we reviewed, did she
7 indicate her age nearly every day?

8 MR. SHAPIRO: Objection. The exhibit speaks for
9 itself. Best evidence.

10 THE COURT: Overruled.

11 A. Yes.

12 BY MS. SMITH:

13 Q. Is this the first time he actually asks her age?

14 A. Yes.

15 Q. And how does she respond?

16 A. "I'm 15, I have to put 19 in the ad or it takes it down.
17 Thats why I told u Im not old enough to drive so I dont lie to
18 people."

19 Q. And how does he respond to that?

20 A. "Know your lying your 19! You have to tell me ur 19. We
21 can meet and talk about it if u like. When are u free."

22 MS. SMITH: Can we go to page 9.

23 BY MS. SMITH:

24 Q. How does she respond to those messages?

25 A. "Some guys like Im 15, some dont, but one got mad at me

1 for not telling so Im always honest now. If u want older girl
2 thats okay then u should go find older girl."

3 Q. And how does he respond to that?

4 A. "Are you free."

5 Q. And what does she say?

6 A. "I have to wait and see. My mom is working from home, but
7 said she may have to go in to the office for a few hours now."

8 MS. SMITH: Can we go to page 10.

9 For the record, we're now looking at page 10 of Exhibit
10 No. 3.

11 BY MS. SMITH:

12 Q. Does she have another message after that?

13 A. Yes.

14 Q. And what is she say?

15 A. "If she does, how much time do u want, where, and what do
16 u want?"

17 Q. And how does he respond?

18 A. "Maybe when we hang out for about an hour."

19 Q. So at the top of the page, she gave him an out.

20 MR. SHAPIRO: Objection, speculation, form of the
21 question.

22 THE COURT: I'm going to overrule that.

23 A. Yes. When she said if you want an older girl, then you
24 should go find an older girl.

25 MS. SMITH: Can we go to page 11, please.

1 BY MS. SMITH:

2 Q. I believe the message we left off on was when he said we
3 can hang out for about an hour.

4 What does she say in response to that?

5 A. "Would b \$200. Car or going someplace? And what do u
6 want? I have to know to keep myself safe."

7 Q. So her response, she mentions \$200 and asks what he wants.
8 Is sex ever explicitly mentioned?

9 A. In the conversation you're talking about up to this point
10 or...

11 Q. Yes.

12 A. No.

13 Q. But similar to we -- to what we discussed earlier, in your
14 training and experience, are the words stating \$200 for sex a
15 rarity to see in messages?

16 A. Yes.

17 Q. How did he react to her message?

18 A. Said "Probably here."

19 MS. SMITH: Can we go to page 12.

20 For the record, we're now looking at page 12 of Exhibit 3.

21 BY MS. SMITH:

22 Q. And what does she say in response to that?

23 A. "House, hotel, office? I dont commit if I dont know what
24 Im agreeing to."

25 Q. And what does he say?

1 A. "House."

2 Q. And then what did she say in response?

3 A. "What r u wanting?"

4 Q. And what does he say?

5 A. "Nothing weird."

6 MS. SMITH: Kathy, can we move to the next page.

7 For the record, we're now looking at page 13 of Exhibit 3.

8 BY MS. SMITH:

9 Q. How does she respond?

10 A. "Okay, I dont think Im the girl for u, I dont commit to
11 vague shit. Thank u anyway tho."

12 Q. So she declines his offer to meet.

13 A. Correct.

14 MR. SHAPIRO: Objection. Move to strike his answer.
15 That exhibit speaks for itself.

16 THE COURT: Sustained. I would ask the jury to
17 disregard the answer just given.

18 MS. SMITH: Your Honor, may I have a moment?

19 THE COURT: You may.

20 (An off-the-record discussion was had.)

21 BY MS. SMITH:

22 Q. Deputy Miller, when you wrote this response, what were you
23 meaning?

24 A. That she's not interested in meeting with him anymore.

25 Q. Why?

1 A. Because she doesn't agree to meet if she's not
2 understanding what the expectations of her are.

3 Q. Let's take a second to speak again about your training and
4 experience in human trafficking investigations.

5 A. Okay.

6 Q. As we went over in the advertisement, there were certain
7 sex acts that the person posting it found acceptable.

8 A. Correct.

9 Q. But in the real world, when these women get a client, is
10 that what always happens?

11 A. No.

12 Q. Are there dangers involved for these women who are being
13 sold for sex?

14 A. Yes.

15 Q. What are some of those dangers?

16 A. The dangers are getting robbed, getting forced to sex acts
17 that they wouldn't agree to. It could be getting beaten. It
18 could be getting abducted. There's -- It's very dangerous for
19 them.

20 Q. So based on this, are there some women who will set clear
21 expectations before meeting with a man?

22 A. Yes.

23 Q. And what happens if the man refuses to set these
24 boundaries?

25 A. Then she will not follow through with the meeting.

1 Q. Okay. Now turning back to these text messages, how does
2 Mr. Bates respond when she says that?

3 A. "I just don't want to incriminate myself."

4 Q. What does it mean to incriminate one's self?

5 A. That he doesn't want to say something that could legally
6 get him in trouble.

7 Q. What does she say in response?

8 A. She says, "Okay, and I dont commit to unknown, I learned a
9 bad lesson that way.... good luck, plenty of girls out there."

10 Q. So by writing this response, you were indicating what you
11 mentioned, that not setting boundaries can get girls into
12 trouble?

13 A. Correct.

14 Q. And she told him "good luck, plenty of girls out there."

15 A. Yes.

16 Q. How does he respond to this?

17 A. "I'll get back to you when I'm more sure."

18 MS. SMITH: Kathy, can we go to the next page.

19 For the record, we are now looking at page 14 of Exhibit
20 No. 3.

21 BY MS. SMITH:

22 Q. So I believe the first message on this page was that
23 message, "I'll get back to you when I'm more sure."

24 A. Correct.

25 Q. After he says that, does she take any action to convince

1 him to change his mind?

2 MR. SHAPIRO: Object to the form of the question.

3 THE COURT: Overruled.

4 A. No.

5 BY MS. SMITH:

6 Q. Does she message him at all again on April 2nd?

7 A. No.

8 Q. Who initiates the conversation on April 3rd?

9 A. Mr. Bates.

10 Q. What does he say?

11 A. "Let's get together." "I can come now." "You there
12 please text back." "Hey." "I want to see u."

13 Q. Does she respond to any of these?

14 A. No.

15 Q. How many hours apart are these?

16 A. Approximately an hour.

17 Q. Okay. So all together from the first one -- oh, never
18 mind.

19 MS. SMITH: Kathy, can we go to page 15 of Exhibit 3.

20 BY MS. SMITH:

21 Q. What's the next message he sends her?

22 A. "I'm in your area." "I sure wish you would respond to my
23 text." "U home."

24 Q. And are those all on April 3rd?

25 A. Yes.

1 Q. Does she message him at all on April 3rd?

2 A. No.

3 Q. Who initiates the conversation on April 4th?

4 A. Mr. Bates.

5 Q. And what does he say?

6 A. "Good morning." "Hey hope ur ok?" "Hello." "Hey." And
7 "U there?"

8 MS. SMITH: Can we go to page 16.

9 For the record, we're now looking at page 16 of Exhibit
10 No. 3.

11 BY MS. SMITH:

12 Q. Those last three messages, the "Hello," "Hey," "U there,"
13 what day did those messages occur?

14 A. Those occurred on April 5th.

15 Q. So did she appear to message him at all on April 5th?

16 A. No.

17 MS. SMITH: And, I'm sorry, Kathy, going back quickly
18 to page 15.

19 For the record, we're looking at page 15 of Exhibit 3.

20 BY MS. SMITH:

21 Q. Did she message him at all on April 4th?

22 A. No.

23 Q. Okay. Going back to page 16 of Exhibit 3, who initiates
24 the conversation on April 5th?

25 A. Mr. Bates.

1 Q. Does she finally respond at some point?

2 A. On April 6th.

3 Q. And what does she say?

4 A. "Sorry, weekend sucked! Mom made me shut my phone down
5 cuz I didn't get all my school done online. She went into work
6 for a few hours finally!"

7 Q. So from April 3rd until April 6th, approximately how many
8 messages did Mr. Bates send her that she didn't respond to?

9 A. Approximately 13.

10 Q. Yet he kept messaging her.

11 A. Correct.

12 Q. What's her second message she sends on April 6th?

13 A. "She went into work for a few hours finally!"

14 Q. And how does he respond?

15 A. "Want to get together." "I really want to see u."

16 Q. So when she did finally respond, did she make mention to
17 her age again?

18 A. She mentioned didn't get all of her school done online.

19 MR. SHAPIRO: Objection. Move to strike,
20 nonresponsive. It's a yes or no question.

21 THE COURT: I'll sustain the objection. You may
22 approach it a different way.

23 MS. SMITH: Okay.

24 BY MS. SMITH:

25 Q. When she finally responded, did she make mention to her

1 schoolwork?

2 A. Yes.

3 Q. Did she also make mention to her mom?

4 A. Yes.

5 MS. SMITH: Kathy, can we go to page 17.

6 For the record, we are now looking at page 17 of Exhibit
7 No. 3.

8 BY MS. SMITH:

9 Q. What does he say to her?

10 A. "Want to get together." "I really want to see u." "U
11 there."

12 Q. Now I want to take a second to stop again and discuss your
13 training and experience. Can you explain to the jury what the
14 word "grooming" means?

15 A. "Grooming," that's commonly a way that an adult may
16 prepare a child for sexual activity. Oftentimes it's trying to
17 develop a relationship with them or to make something appear
18 less severe than it really is, to try to make something bad not
19 look so bad, I guess.

20 Q. So in simpler terms, is it a way of manipulating a child?

21 A. Yes.

22 Q. Is that sometimes done through emotion?

23 A. Yes.

24 Q. And can it be done through emotional phrases, showing
25 friendship?

1 A. Yes.

2 Q. Based on your training and experience, a grown male
3 reaching out to a child and saying "I really want to see u,"
4 could that qualify as grooming?

5 A. It could, yes.

6 Q. And as you testified previously, minors are more
7 vulnerable to this type of crime?

8 A. Yes.

9 Q. Going back to page 17 of Exhibit 3, how does she respond
10 after he says, "I really want to see u"?

11 A. "I want to, but am making sure she is staying at work the
12 whole day. Still want an hour?"

13 Q. And how does he respond?

14 A. "Yes." "How will you know that."

15 MS. SMITH: Can we go to page 18, please.

16 For the record, we're looking at page 18 of Exhibit 3.

17 BY MS. SMITH:

18 Q. What does she say?

19 A. "Im waiting for her to call, she usually tells me so I
20 know what to do about dinner."

21 Q. And what does he say?

22 A. "Think she'll call fairly soon?"

23 Q. So again they're both discussing her mother not being
24 home?

25 A. Correct.

1 Q. Okay. And at the bottom of the page, what does he say?

2 A. "Earlier the better. We can hang out at my place, smoke a
3 little and have sex."

4 Q. Is this the first time he explicitly says he wants to have
5 sex with her?

6 A. Yes.

7 Q. And does that message appear in the midst of them speaking
8 about her mom?

9 A. Yes.

10 MS. SMITH: Can we go to page 19, please.

11 For the record, we're looking at page 19 of Exhibit 3.

12 BY MS. SMITH:

13 Q. How does she respond to that?

14 A. "I'll let u know as soon as I hear, I may or may not smoke
15 today cuz my mom might notice, can u pick me up?" "Also, sex
16 is broad, just condom everything okay? And no ass."

17 Q. Does he agree to that?

18 A. Yes.

19 Q. So he agrees to using condoms and picking her up.

20 A. Correct.

21 MS. SMITH: Can we go to page 20, please.

22 For the record, we are looking at page 20 of Exhibit
23 No. 3.

24 BY MS. SMITH:

25 Q. On page 20, do they continue discussing the meeting and

1 him picking her up?

2 A. Yes.

3 Q. And does he continue to try to convince her to smoke?

4 A. Yes.

5 Q. In what message does he say that?

6 A. Where he says, "She won't notice a few puffs."

7 Q. Okay. Can you read her message at the bottom of the page?

8 A. "OMG," which would be oh my God, "Im trying but if I text
9 or call her too much she'll be suspicious."

10 Q. When you responded in this way, what was your intention?

11 A. To basically just -- she was telling him just chill out,
12 I'm trying, but if I text her too much, she's going to know
13 something's up.

14 Q. So in other words, your response was because you were
15 feeling Mr. Bates was pressuring with the texts?

16 MR. SHAPIRO: Objection. That is speculation and the
17 form and it's leading.

18 THE COURT: I'll sustain that objection.

19 BY MS. SMITH:

20 Q. Was Mr. Bates's sending you a substantial number of texts
21 regarding his [sic] mom before you sent this response?

22 MR. SHAPIRO: Objection. The exhibit speaks for
23 itself. Best evidence.

24 THE COURT: I'm going to sustain the objection.

25 MS. SMITH: Can we go to page 21, please.

1 BY MS. SMITH:

2 Q. How does she respond?

3 A. Starting at the top again?

4 Q. Let's start at the message that was sent at 1:14 p.m.

5 A. She says, "Not great but not terrible, she wont be home
6 until 4, so I have to b back by 3 to be safe."

7 Q. And what does he say?

8 A. "Should I come now."

9 Q. Do they appear to figure out a time and place to meet?

10 A. Yes.

11 Q. And where is that?

12 A. At the Kum & Go on Pacific Street near Millard North.

13 Q. Okay.

14 MS. SMITH: Can we move to page 22.

15 For the record, we're looking at page 22 of Exhibit No. 3.

16 BY MS. SMITH:

17 Q. In the middle of the page, what does she say?

18 A. "Yes, I can walk to there by like 154th Street."

19 Q. So again she's mentioning walking?

20 A. Correct.

21 Q. And does he agree?

22 A. Yes.

23 Q. What does he say?

24 A. "What time."

25 Q. And what does she say in response to that?

1 A. "Now is fine, text when there & I'll come over, I live
2 close."

3 MS. SMITH: Can we go to page 23.

4 We're now looking at page 23 of Exhibit No. 3.

5 BY MS. SMITH:

6 Q. Towards the middle of the page, what does she say?

7 A. "Can u get me some shooters to relax me in case I dont
8 smoke?"

9 Q. So she's asking for another favor of him?

10 A. Correct.

11 Q. And how does he respond?

12 A. "What kind."

13 Q. Does she tell him what kind?

14 A. Yes, "something cinnamon like fireball."

15 Q. Okay.

16 MS. SMITH: Can we go to page 24.

17 For the record, we're now looking at page 24 of Exhibit
18 No. 3.

19 BY MS. SMITH:

20 Q. And how does he respond to that?

21 A. By asking "How many."

22 Q. Okay. And then what is his next message to her?

23 A. That he's a couple minutes away.

24 Q. And does she ask what kind of car he's driving?

25 A. Yes.

1 Q. And does he tell her?

2 A. Yes, a Jeep.

3 MS. SMITH: Can we go to page 25.

4 BY MS. SMITH:

5 Q. Does he ask how he'll recognize her?

6 A. Yes.

7 Q. And what does she say?

8 A. A "pink T and shorts" and she'll walk in the Kum & Go and
9 go use the bathroom and then walk out.

10 Q. And then what does she say?

11 A. Asks if he's got the shooters already.

12 Q. Okay. And what does he say in response?

13 A. "Ya."

14 Q. And what's the last message?

15 A. "On my way."

16 Q. Is that the last message that occurred between you and
17 Mr. Bates?

18 A. Yes.

19 Q. Now, on April 6th of 2020 when these messages were
20 occurring, were you and other law enforcement officers with the
21 Douglas County Sheriff's Office preparing in case Mr. Bates
22 agreed to meet with the minor?

23 A. Yes.

24 Q. What did those preparations entail?

25 A. They entailed having -- we have a surveillance van with

1 multiple camera angles that would set up in the area ahead of
2 time, and I would be in the area to maintain texting, and then
3 we would have maybe two to three other plainclothes
4 investigators that would be in unmarked cars, and then we would
5 also have an officer that had a uniform or the marked vest in a
6 marked cruiser nearby.

7 Q. And what did you personally do near the end of the text
8 conversation?

9 A. I was just in the area maintaining the texting.

10 Q. And we previously discussed that you looked up Mr. Bates
11 with his phone number.

12 A. Correct.

13 Q. So were you aware what type of vehicle you were watching
14 for?

15 A. Yes.

16 Q. And did you also have a driver's license photo of
17 Mr. Bates?

18 A. Yes.

19 Q. So as you were there at the Kum & Go as 154th and Pacific,
20 did you observe the vehicle registered to Mr. Bates arrive?

21 A. I don't recall if I observed it where -- where I was at,
22 but if I didn't specifically, then people would be relaying
23 that over the radio.

24 Q. Okay. And did another officer perform a traffic stop on
25 Mr. Bates' vehicle?

1 A. Yes. Where he was parked in front of the Kum & Go.

2 Q. Who was driving that vehicle?

3 A. Lieutenant Will Niemack.

4 Q. Okay. And who was in Mr. Bates' vehicle?

5 A. Mr. Bates.

6 Q. Was there anyone else in the vehicle with him?

7 A. No.

8 Q. Did you make contact with Mr. Bates?

9 A. Yes.

10 Q. Do you see Mr. Bates in the courtroom here today?

11 A. Yes.

12 Q. Can you point to where he's sitting and identify an item
13 of clothing that he's wearing.

14 A. Yes. He's sitting to my left and he's wearing a -- it
15 looks like a short-sleeved black polo.

16 MS. SMITH: Your Honor, let the record reflect that
17 the witness has identified the defendant.

18 THE COURT: So noted.

19 BY MS. SMITH:

20 Q. At that point, was Mr. Bates placed in your vehicle?

21 A. Yes.

22 Q. Did you -- or were you intending to interview Mr. Bates?

23 A. Yes.

24 Q. Prior to the interview, did you read Mr. Bates his Miranda
25 rights?

1 A. Yes.

2 Q. Did he agree to speak with you?

3 A. Yes.

4 Q. Did he sign a form stating that?

5 A. Yes.

6 MR. SHAPIRO: If you want to just offer 4, I have no
7 objection.

8 MS. SMITH: Okay. Your Honor, at this time I would
9 like to admit Government Exhibit No. 4.

10 MR. SHAPIRO: No objection, Your Honor.

11 THE COURT: Okay. Exhibit 4 is admitted.

12 MS. SMITH: And I would move to publish, Your Honor.

13 THE COURT: You may.

14 BY MS. SMITH:

15 Q. Is this the waiver of rights form that Mr. Bates signed?

16 A. Yes.

17 Q. And that has his signature at the bottom?

18 A. Yes.

19 Q. Was your interaction with Mr. Bates recorded?

20 A. Yes.

21 MS. SMITH: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MS. SMITH:

24 Q. Deputy Miller, I've handed you what's been marked as
25 Government Exhibits 5 and 19. Do you recognize first Exhibit

1 No. 5?

2 A. Yes.

3 Q. Is that a copy of the entire interview you recorded with
4 Mr. Bates on April 6th?

5 A. Yes.

6 Q. Is that a true and accurate copy of that interview?

7 A. Yes.

8 MS. SMITH: Your Honor, at this time I would move to
9 admit Government Exhibit 5.

10 MR. SHAPIRO: No objection to 5, Your Honor.

11 THE COURT: Exhibit 5 is admitted.

12 BY MS. SMITH:

13 Q. And Government Exhibit 19, is that specific portions of
14 that interview that you completed on April 6th of 2020?

15 A. Yes.

16 Q. Is that a true and accurate copy of specific portions of
17 that interview?

18 A. Yes.

19 MS. SMITH: Your Honor, I would move to admit
20 Government Exhibit 19.

21 MR. SHAPIRO: I have no objection to 19, Your Honor.

22 THE COURT: Exhibit 19 is admitted.

23 MS. SMITH: May I approach?

24 THE COURT: You may.

25 MS. SMITH: And, Your Honor, I would seek permission

1 to publish both of those exhibits.

2 THE COURT: You may.

3 MS. SMITH: Can we play Exhibit 19, please.

4 For the record, we're showing Exhibit No. 19.

5 (A portion of Exhibit No. 19 was played.)

6 BY MS. SMITH:

7 Q. Was this the first -- or what was the first question you
8 asked Mr. Bates?

9 A. What brought him to the Kum & Go that day.

10 Q. And what was his answer?

11 A. Prostitution.

12 Q. Did he indicate how often he sought out prostitutes?

13 A. I think he said occasionally.

14 Q. Did he indicate that it wasn't frequently?

15 A. Yes.

16 (A portion of Exhibit 19 was played.)

17 BY MS. SMITH:

18 Q. So in response to your question about how old the girl,
19 did he state how old the girl said she was?

20 A. No.

21 Q. What did he respond instead?

22 A. How old the profile said she was on Skip the Games.

23 Q. Okay.

24 (A portion of Exhibit 19 was played.)

25 BY MS. SMITH:

1 Q. So he indicated to you that he didn't believe the girl was
2 15.

3 A. Correct.

4 Q. Based on that response, did you decide to go get his phone
5 and review the messages with him?

6 A. Yes.

7 MS. SMITH: Your Honor, may I approach?

8 THE COURT: You may.

9 BY MS. SMITH:

10 Q. Deputy Miller, I've been -- handed you what's been marked
11 as Government Exhibit 14. Do you recognize this exhibit?

12 A. Yes.

13 Q. What is it?

14 A. A black Apple iPhone with a clear case found in
15 Mr. Bates's possession.

16 Q. Is this the phone that was in Mr. Bates' car that you went
17 and retrieved and reviewed with him?

18 A. Yes.

19 MS. SMITH: Your Honor, at this time I would move to
20 admit Government Exhibit 14.

21 MR. SHAPIRO: There's no objection to 14, Your Honor.

22 THE COURT: Exhibit 14 is admitted.

23 MS. SMITH: May I approach?

24 THE COURT: You may.

25 (A portion of Exhibit 19 was played.)

1 BY MS. SMITH:

2 Q. So Mr. Bates admitted he was at least concerned about her
3 age.

4 A. Correct.

5 Q. And yet did he arrive at the gas station?

6 A. Yes.

7 Q. And he claimed that if he had figured out she was actually
8 15 that he wouldn't have had sex with her?

9 A. Yes.

10 Q. What did he say he would have done instead?

11 A. "I would have been more of a father figure."

12 Q. Did he explain to you how he would have been a father
13 figure in this 15-year-old girl's life?

14 A. No.

15 Q. He stated he had concerns, but did he explain to you how
16 he would have figured out what her real age was once he picked
17 her up?

18 A. No.

19 Q. Now, going back to the messages, the text messages that we
20 discussed, throughout this entire text conversation, did he
21 ever seek any type of documentary verification of her age?

22 A. No.

23 Q. Did he ask to see an identification document like a school
24 ID?

25 A. No.

1 Q. Did he ask to see a passport?

2 MR. SHAPIRO: Objection. Asked and answered by the
3 first question which covered everything.

4 THE COURT: Overruled.

5 A. No.

6 BY MS. SMITH:

7 Q. Did he ask to see an unfiltered picture of her face to get
8 a better grasp on her age?

9 A. No.

10 Q. Did he ask any type of question to address his concerns
11 that she could actually be 15?

12 A. Well, just stated that he wanted her to tell him that she
13 was 19, otherwise, no.

14 Q. And then despite of his concerns, he showed up to the
15 Kum & Go at 154th and Pacific.

16 A. Correct.

17 Q. And he told you that he simply didn't believe her.

18 A. Right.

19 Q. And that how he was somehow going to be able to verify her
20 age once they met so they could go over to his house and have
21 sex.

22 A. Can you repeat that, please. I'm sorry.

23 Q. Yeah, sure. So he indicated that he was somehow going to
24 verify her age during the time period that he picked her up and
25 took her back to his house with the intent to have sex with

1 her?

2 MR. SHAPIRO: Objection. That's not what the
3 evidence shows based on the audio and video.

4 THE COURT: Sustained.

5 BY MS. SMITH:

6 Q. Well, based on the messages, he was intending to pick her
7 up?

8 A. Yes.

9 Q. And was he intending to take her back to his house?

10 MR. SHAPIRO: Objection, leading her own witness.

11 THE COURT: Sustained.

12 BY MS. SMITH:

13 Q. In the messages, did they agree to go back to the house?

14 A. Yes.

15 Q. And when Mr. Bates messaged you, did he state it was his
16 intent to have sex?

17 MR. SHAPIRO: Objection. It's leading and not the
18 best evidence.

19 THE COURT: One moment. Overruled.

20 A. Yes.

21 THE COURT: Ms. Smith, when it'd be a good time for
22 you to break in your questioning, it's about time for our
23 afternoon break.

24 MS. SMITH: That's certainly fine, Your Honor.

25 THE COURT: Okay. Ladies and gentlemen of the jury,

1 at this point in time, we are going to take a 15-minute break.
2 It's 2:27 p.m. What we will do is we will break until
3 2:45 p.m. which is just a few minutes over 15 minutes.

4 So during that time I just remind you of my prior
5 admonition to you. Namely, you're not allowed to discuss this
6 case with each other or anyone else, no texting, no nothing on
7 the Internet at all about this case.

8 So at this point in time, I would like everyone to rise as
9 the jury leaves the courtroom.

10 (Jury out at 2:28 p.m.)

11 THE COURT: Mr. Miller, you may be excused for our
12 break as well.

13 THE WITNESS: Thank you.

14 THE COURT: Counsel may be seated for one moment.

15 Counsel, is there anything that we need to address now
16 that the jury is out of the courtroom before we take our break
17 for the afternoon break? I'll start with the United States,
18 Ms. Smith.

19 MS. SMITH: Nothing for the government. Thank you.

20 THE COURT: Okay.

21 MR. SHAPIRO: No, Your Honor. Thank you.

22 THE COURT: Okay. All right. At this point in time,
23 we will recess until 2:45 p.m.

24 Thank you.

25 (Recess taken at 2:29 p.m.)

1 (At 2:45 p.m. on November 16, 2021; with counsel and the
2 defendant present; WITHOUT the jury:)

3 THE COURT: Counsel, is there anything we need to
4 address before we bring the jury back in? Ms. Smith.

5 MS. SMITH: No, Your Honor.

6 THE COURT: Mr. Shapiro.

7 MR. SHAPIRO: No, Your Honor.

8 THE COURT: Please bring in the jury.

9 (Jury present at 2:46 p.m.)

10 THE COURT: You may be seated.

11 Ms. Smith, if you can please bring the witness back up.

12 MS. SMITH: Certainly. Thank you.

13 CHAD MILLER, PREVIOUSLY SWORN, RESUMED THE STAND

14 THE COURT: Mr. Miller, I'll just remind you that you
15 remain under oath.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Please proceed.

18 MS. SMITH: Thank you, Your Honor.

19 For the record, when we went on break, we were reviewing
20 Exhibit No. 19.

21 (A portion of Exhibit 19 was played.)

22 MS. SMITH: At this time I'd like to pull up
23 Exhibit 5 beginning at minute 14.

24 THE COURT: Please proceed.

25 MS. SMITH: Thank you.

1 (A portion of Exhibit 5 was played.)

2 DIRECT EXAMINATION RESUMED

3 BY MS. SMITH:

4 Q. Now, Deputy Miller, this meeting occurred on April 6th of
5 2020; is that right?

6 A. Correct.

7 Q. Okay. Regarding the timing of this interview, what was
8 going on in Omaha and across the country?

9 A. COVID.

10 Q. And how did that impact kids specifically?

11 A. There was a lot of kids that were at home unsupervised
12 doing online school.

13 Q. Now, based on your job as a deputy for the Douglas County
14 Sheriff's Office and as a task force officer for the FBI, did
15 that raise specific concerns for you?

16 MR. SHAPIRO: Objection, relevance, for purposes of
17 this trial.

18 THE COURT: Overruled.

19 A. Yes. The task force received an email from the FBI
20 stating that due to this they're seeing an increase of online
21 enticement.

22 MS. SMITH: May I publish Exhibit No. 19 again?

23 THE COURT: You may.

24 (A portion of Exhibit 19 was played.)

25 BY MS. SMITH:

1 Q. Deputy Miller, at some point in the interview, did you
2 discuss some of the items that Bates had brought with him to
3 meet the girl?

4 A. Yes, I believe so.

5 Q. Did you ask him whether he had picked up the Fireball
6 Whisky?

7 A. Yes.

8 Q. What did he say?

9 A. Yes. That he had picked it up at a different Kum & Go.
10 This one we were at was at 154th and Pacific. He said he
11 thought it was the one around 192nd and Pacific.

12 Q. So after the interview ended that day, did law enforcement
13 with Douglas County Sheriff's Office receive a copy of the
14 surveillance video at that gas station?

15 A. Yes.

16 MS. SMITH: Your Honor, may I approach the witness?

17 THE COURT: You may.

18 MR. SHAPIRO: If you'd like to just offer it, I'm not
19 going to object.

20 MS. SMITH: Certainly.

21 Your Honor, at this time the government moves to admit
22 Government Exhibit 13.

23 MR. SHAPIRO: There'd be no objection to 13, Your
24 Honor.

25 THE COURT: Exhibit 13 is admitted.

1 BY MS. SMITH:

2 Q. During the interview, did Mr. Bates additionally indicate
3 whether he had brought money with him?

4 A. Yes.

5 MS. SMITH: Your Honor, may I approach?

6 THE COURT: You may.

7 MR. SHAPIRO: If you'd like to just offer that
8 exhibit, you certainly can.

9 MS. SMITH: Your Honor, at this time I'd move to
10 admit Government Exhibit 12.

11 MR. SHAPIRO: No objection to 12, Your Honor.

12 THE COURT: Twelve is admitted.

13 MS. SMITH: Your Honor, may I publish?

14 THE COURT: Yes, you may.

15 BY MS. SMITH:

16 Q. Deputy Miller, are these the two \$100 bills that you
17 pulled from Mr. Bates' wallet that day?

18 A. I believe so, yes.

19 Q. And is this the amount that Mr. Bates agreed to pay the
20 minor?

21 A. Yes. I'm sorry, yes.

22 Q. Did you ask him whether he had any condoms on his person?

23 A. Yes.

24 Q. And what did he say?

25 A. No.

1 Q. Did he state that he had condoms?

2 A. I asked if he had some at home and he said yes.

3 Q. Was there anything else of interest located in Mr. Bates's
4 vehicle?

5 A. There was a prescription.

6 Q. And what was the prescription for?

7 A. I believe it was sildenafil, but I looked it up, and it
8 was -- it's the generic Viagra, but I believe it's sildenafil.

9 Q. Now, we reviewed the text messages and you were
10 discussing -- or you and Mr. Bates were texting from March 30th
11 until April 6th. Why not just make a quick deal with
12 Mr. Bates?

13 A. It could be numerous reasons. One would be that the --
14 you know, the dialogue was continuing over time which would
15 help me gauge how serious he was about pursuing somebody that
16 he was told was 15. To give him an opportunity to think about
17 it, I guess, over a period of time. Other things could be
18 logistical reasons like whether or not we had personnel to meet
19 with somebody so there could be various reasons.

20 Q. And did you also -- or at times in these investigations,
21 do you sometimes purposefully delay responding to the person
22 seeking sex?

23 A. Yes.

24 Q. Why?

25 A. Well, if I purposefully delay it, it's just again to -- to

1 not reach out to that person, I guess, and give them time to
2 see if after thinking about it if they're going to continue to
3 pursue the 15-year-old.

4 Q. And as we discussed in the text messages, there were two
5 different times -- or how many times did you tell Mr. Bates he
6 could find another girl?

7 A. I think there was two different times when I made a
8 reference of if you want an older girl, just go find an older
9 girl, and then the other one would be something similar to
10 there's plenty of older girls out there maybe or something to
11 that effect.

12 Q. And when you're investigating these sorts of cases, why do
13 you make those sorts of statements?

14 A. It gives them an opportunity -- like we call it an out,
15 but it gives them an opportunity to -- to leave the
16 conversation and to not contact her again, and so sometimes
17 I'll even take that a step further by actually saying --
18 suggesting if you want an older girl, then go get an older
19 girl.

20 MS. SMITH: One moment, please, Your Honor.

21 May I consult with counsel?

22 THE COURT: You may.

23 (An off-the-record discussion was had.)

24 MS. SMITH: Your Honor, the government passes this
25 witness subject to recall at a later time.

1 THE COURT: Okay. Any cross-examination?

2 MR. SHAPIRO: I do, Your Honor.

3 THE COURT: Okay. Please proceed.

4 MR. SHAPIRO: Thank you.

5 THE COURT: And I'll invite the witness -- since you
6 may be recalled, I'll just remind you that -- well, first of
7 all, we're going to start with the cross-examination. Once
8 your examination is continued -- is completed, I'll just remind
9 you, if I don't remind you then, that you may be recalled so
10 please proceed.

11 THE WITNESS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SHAPIRO:

14 Q. Good afternoon, Deputy.

15 A. Good afternoon.

16 Q. So let me get this right. You post an ad on Skip the
17 Games, correct?

18 A. Correct.

19 Q. And it's an ad for prostitution, correct?

20 A. Yes, it's an ad that we pattern after other ads on
21 there --

22 Q. Okay.

23 A. -- for prostitution.

24 Q. Okay. In regard to patterning other ads, you post an ad
25 soliciting prostitution for that particular fake individual

1 you're covering as, right?

2 A. Yes.

3 Q. And you already told us that Skip the Games has no other
4 purpose except for prostitution, correct?

5 A. Correct.

6 Q. So all the people posting, we'll just say in this case
7 mostly females offering sex for certain prices, that's --
8 that's what they're on there for is they're -- they're letting
9 people know they're prostitutes and you can find me online,
10 true?

11 A. That's what the ads are saying; however, each individual
12 purpose -- person's purpose for being on there may not be the
13 same.

14 Q. Okay. What was your purpose of your ad?

15 A. Well, one of the ways that we combat trafficking against
16 minors is we have to mimic the best that we can how that
17 actually happens in the real world.

18 Q. Okay. I'll ask a better question.

19 A. Okay.

20 Q. The purpose of your ad to the general public when they
21 look at it would be to engage in sex with that profile for
22 certain prices.

23 A. Well, the exact purpose of my ad is for us to identify men
24 that are willing to pay a minor for sex.

25 Q. All right. Let's talk about the ad. It's Exhibit 2. I

1 don't need it up. You're well familiar with it, aren't you?

2 A. Enough.

3 Q. The title is Kitty Loves to PURRRR, right?

4 A. Correct.

5 Q. And you post different things saying you want this, I got
6 what you want, those sort of things, right?

7 A. Correct.

8 Q. And basically say that you accept cash for payment,
9 correct?

10 A. Correct.

11 Q. Also on Exhibit 2 you actually list prices for the amount
12 of time to engage in sex with you, correct?

13 A. Well, to engage in sex with a 15-year-old, yes.

14 Q. Okay. Which is you in this case, right?

15 A. Posing as, yes.

16 Q. And is there anything about this ad on here that says
17 you're a minor?

18 A. There's things in the ad that typically may indicate it,
19 but there's nothing in there, no, that says, hey, I'm a minor.

20 Q. Is there anything in Exhibit 3 where you say, I don't want
21 to have sex, stop bothering me?

22 A. Exhibit 3 being the text messages?

23 Q. That'd be correct.

24 A. There's a couple occasions where she says that -- trying
25 to do it from memory -- I don't think that I'm the girl for

1 you.

2 Q. Which implies --

3 A. Thank you -- thank you anyway. Also saying there's other
4 girls out there so there's, yes, statements --

5 Q. Okay.

6 A. -- saying not interested.

7 Q. Well, actually when you say I'm not the girl for you, that
8 means you're the girl for other people, just not this
9 Mr. Bates. That's a fair interpretation, isn't that?

10 A. Could be based on, yeah, his behavior that she's not.

11 Q. And on this ad, you list activities that the provider,
12 which is you or the fake 15-year-old, likes to have done,
13 correct?

14 A. Correct.

15 Q. Mm-hmm. Let's talk about those. Face sitting?

16 A. Yes.

17 Q. What's that?

18 A. So face sitting, that would be when the female sits on the
19 male's face.

20 Q. Okay. And the second one says "Intercourse - Vaginal." I
21 think that's self-explanatory, right, Deputy?

22 A. I think so.

23 Q. Okay. How about oral and then it says receiving? That
24 means you're posting an ad telling these people if they pay a
25 certain price, it's listed, you like to have oral sex performed

1 on you. That's what that says, isn't it?

2 A. Yes. The user --

3 Q. That's a yes or no.

4 A. Okay.

5 Q. Then the next service you like or might provide under your
6 ad is "Intercourse - Oral." That's kind of self-explanatory
7 too, isn't it?

8 A. I agree.

9 Q. And once again, your ad says for 80qv or 120hh or 200hh,
10 whoever responds to this ad can enjoy these services for these
11 prices. That is what this says. True or false?

12 A. That's what that says.

13 Q. Kissing. That's the other activity you -- you enjoy on
14 your list, right?

15 A. Correct.

16 Q. And how about rimming? That's on there too, right?

17 A. Yes.

18 Q. You like receiving rimming. That's what it says.

19 A. Correct.

20 Q. And, again, based on this ad, if someone likes to give
21 others rims or rim jobs it's called, right, they just have to
22 pay these prices and during that quick visit, half hour, hour,
23 they can engage in all these sexual things that you list. True
24 or false?

25 A. At her discretion.

1 Q. Okay. At her discretion. But you posted this ad on a
2 prostitution website saying I'm available for these prices for
3 these acts. Is that -- am I accurate or am I being wrong
4 somewhere here?

5 A. No. That's correct.

6 Q. And, again, the ad describes specific different acts, at
7 least five or six, seven, right?

8 A. Yes.

9 Q. Prices for those.

10 A. Yes.

11 Q. For the certain time frame, right?

12 A. Correct.

13 Q. The government spent some time going through Exhibit
14 No. 3. Those would be the text messages exchanges. You recall
15 that, right?

16 A. Yes.

17 Q. I don't need it up in front of me. I'll bring it to you
18 if you need it, but at page 10 of Exhibit 3, you say in
19 reference to if your mom's going to be gone, "If she does, how
20 much time do u want, where, and what do u want?" That's what
21 you were saying to Mr. Bates, isn't it?

22 A. Correct.

23 Q. You don't see anywhere in there "I don't want to engage in
24 sex 'cause I'm only 15," do you? It's a yes or no question.

25 A. Well, I don't think it is. It's hard without a context to

1 be able to say -- I feel like it would be an incomplete answer,
2 a yes or no would be.

3 Q. Well, you've -- you familiarized yourself with Exhibit 3,
4 I assume, the text message conversation?

5 A. Yes.

6 Q. Can you tell me is there anywhere in here where you say
7 no, I don't want to have sex?

8 A. In other words, yes. She says, I'm not the person for
9 you, go find an older girl, no thank you, thanks anyway. So
10 they're just other phrasings of no.

11 Q. Page 11 of that exhibit, you ask, "House, hotel or [sic]
12 office? I dont commit if I don't know what Im agreeing to."

13 Do you recall saying that, right?

14 A. Yes.

15 Q. So you are willingly engaging in a conversation with
16 Mr. Bates about a sex act for a certain price at a certain
17 location. That's what you're doing here. True or false?

18 A. Yes, that is the context of the text conversation.

19 Q. And when you say in response to my previous question,
20 well, I -- I said maybe I'm not the girl for you, that also
21 implies that you're the girl for someone else. Other people
22 may like that, maybe not Mr. Bates, true?

23 A. Well, that could be, yes.

24 Q. Page 13 of Exhibit 3. You say, "I dont commit to vague
25 shit." Right?

1 A. Yes.

2 Q. That means you want the person on the other end to agree
3 to a certain amount of time and price and for what sex act
4 before you'll agree to meet them. True or false?

5 A. True.

6 Q. The government's counsel spent a lot of time going through
7 those messages and asking who initiated the call or the
8 conversation on this day and that date. You remember that,
9 right?

10 A. Yes.

11 Q. If you need to see this in front of you, Deputy, you just
12 let me know, but it appears to me on page 16 of Exhibit 3, the
13 first conversation from April 6th is from you. You initiate
14 that conversation, don't you? It's where you say -- just to
15 help you out -- "Sorry, weekend sucked! Mom made me shut my
16 phone down cuz I didn't get all my school done online."

17 A. So that would have been a response to his 13 unanswered
18 text messages.

19 Q. From the previous day?

20 A. Previous three days.

21 Q. So my question to you is who initiates the conversation on
22 April 6th?

23 A. She does.

24 Q. Which is you?

25 A. Correct.

1 Q. And page 17 of that same Exhibit 3. There's a question.
2 My client says, I want -- he actually questions do you want to
3 get together, I want to see you. And your reply is I want to
4 but I'm making sure she is staying at work the whole day,
5 referencing your mom.

6 Do you recall that?

7 A. Yes.

8 Q. So you basically say I want to do this, right?

9 A. Where is that in context to the times that she said no?
10 I'm not sure on that.

11 Q. Well, regardless of whether you say no ten times before,
12 I'm asking about this conversation which is April 6th, the date
13 that you initiated the contact. You say, "I want to." What
14 are you referring to? What does that mean?

15 A. To meet --

16 Q. It means you want to meet for sex. Right?

17 A. Correct, to meet.

18 Q. At the various prices that you posted here whether it be a
19 quickie, a half hour, or a full hour, right?

20 A. Yes, referencing the negotiation that was going on in the
21 conversation.

22 Q. Yeah. Basically, when you post this ad like you did,
23 regardless of the person's age 'cause we'll get to that at some
24 point, this says that you are ready, willing, and able to have
25 sex for these prices and doing these things. True or false?

1 A. Again, I don't think it's a one-word answer.

2 Q. Well, what am I getting wrong? This is a ad on a
3 prostitution website where you specifically set out time frames
4 of a quickie, a half hour, or an hour, the prices for that, and
5 the sex acts that may be done during those times.

6 What am I missing?

7 A. That the reason that law enforcement or myself would post
8 that ad is because we need to mimic how minors are trafficked
9 and sold for sex online. That's the closest we can do it and
10 that is the method that we use to try to identify people who
11 are willing to pay minors for sex.

12 Q. After some of your experiences with these cases, have you
13 ever thought about maybe trying a different way of going about
14 this?

15 A. We have multiple ways that we combat sex trafficking of
16 minors. This is just one.

17 Q. So just 'cause I want to try to get this answer out of
18 you, Deputy Miller. This is your ad, right?

19 A. Yes.

20 Q. You post different time frames for sex, right?

21 A. Correct.

22 Q. And prices for each of those hours or half hours or
23 quickies that you want, right?

24 A. Correct.

25 Q. And certain sex acts that you'll either do or you like

1 done on -- to you. We know who the "you" is.

2 A. I understand.

3 Q. That's clearly what this ad says, right?

4 A. Yes.

5 Q. Ready, willing, and able to perform any of these acts for
6 these prices. That's what this says, right?

7 A. Yes.

8 Q. Page 19 of Exhibit 3, which we know by now is the text
9 conversation. You say, "Sex is broad, just condom everything
10 okay? And no ass." You remember that?

11 A. Yes.

12 Q. Okay. So you're basically telling at least in this case
13 Mr. Bates that you're willing to have sex as long as it's at
14 these prices but no ass. Am I missing something there?

15 A. That's correct.

16 Q. Once again, you, this person, ready, willing, and able to
17 engage in sex acts for a certain price but no ass, correct?

18 A. Yes.

19 Q. Face sitting is okay, right?

20 A. Yes. At her discretion.

21 Q. And rimming's okay?

22 A. Yes.

23 Q. At her discretion.

24 A. Right.

25 Q. So long as you comply with paying a certain price for the

1 amount of time necessary to do these things, right?

2 A. Well, so long as it's somebody that she's willing to meet
3 with, that she feels comfortable to meet with. That's the way
4 it works in the real world and that's what we're mimicking.

5 Q. So in this case when you say to Mr. Bates maybe I'm not
6 the right person for you, you're not declining having sex for
7 these prices. You're just saying to him maybe we're just not a
8 good hookup?

9 A. Typically, it would be that the sex buyer's making the
10 person feel uncomfortable or unsafe is -- is what we find in
11 interviewing victims.

12 Q. Took my client's phone?

13 A. Yes.

14 Q. You took his phone, didn't you?

15 A. Correct.

16 Q. People who have -- And you looked through it really well,
17 right? I mean not you personally or maybe, but you and other
18 law enforcement professionals whose jobs are tasked with going
19 through these phones, that was done, right?

20 A. Through the extraction, yes.

21 Q. Okay. Generally, people who have sex with minors, we have
22 a name for them, don't we?

23 A. Yes.

24 Q. Pedophile, right?

25 A. Correct. Depending on what they like.

1 Q. Okay. Generally, an adult who has sex with children, we
2 call that a pedophile.

3 A. Correct.

4 Q. Sex with minors, right?

5 A. Correct.

6 Q. And based on your training and experience, true or false,
7 pedophiles like to keep child porn, they like to have that
8 handy either on a computer, phone, magazines. True or false?

9 A. So you're asking me is that a hundred percent true or a
10 hundred percent false?

11 Q. I'm just saying generally do pedophiles tend to look at
12 and like child porn?

13 A. Look at, yes; and in my experience, it's a mix of whether
14 or not they keep it.

15 Q. Okay. Did you find any child porn on Mr. Bates' phone?

16 MS. SMITH: Objection, beyond the scope.

17 THE COURT: I'll sustain that.

18 BY MR. SHAPIRO:

19 Q. Okay. Did you execute a search warrant at my client's
20 house after you arrested him?

21 A. No.

22 Q. After reviewing his phone, did you find anything untawdry
23 [sic] about things on his phone?

24 A. Untawdry?

25 Q. Things you would arrest him for.

1 A. Simply the evidence for our investigation.

2 Q. Okay. Well, as a well-rounded investigator who's looking
3 out for children, which you told us which is a good thing, by
4 the way, protecting children from child porn kind of be like
5 right up near the top of that list of things, wouldn't it?

6 A. For the task force, it is, yes.

7 Q. Okay. Was my client arrested for possessing any child
8 porn?

9 A. No.

10 Q. If you found any on his phone, would he have been?

11 A. He would have been charged, yes.

12 Q. No search warrant executed at his home, though, right?

13 A. Correct.

14 Q. Have you authored search warrant affidavits for courts
15 previously where you wanted to go search the home or business
16 of a target that you have either arrested or are about to?

17 A. Not in the context of these investigations, but as
18 investigations as a whole, yes, I've done that before.

19 Q. Because part of your gambit as a -- in the work you do,
20 child porn's a big deal. It's a problem, isn't it?

21 A. It's not my specific assignment, but yes, you're right, it
22 is.

23 Q. You certainly wouldn't turn a blind eye to it. You would
24 either act on it or turn it over to some other law enforcement
25 person in your task force to follow up, right?

1 A. Correct.

2 Q. None of that applied to Mr. Bates, though, did it?

3 A. No.

4 Q. You downloaded his phone and search history, correct?

5 A. Correct.

6 Q. No surprise. He visited quite a few prostitution sites,
7 true?

8 A. True.

9 MS. SMITH: Your Honor, objection. Beyond the scope
10 of direct.

11 THE COURT: I'll sustain that objection.

12 BY MR. SHAPIRO:

13 Q. After going through the entirety of my client's phone
14 which pretty much you looked at everything, didn't you?

15 A. As much as the software would extract, yes. It's not
16 everything but...

17 Q. Aside from the charge brought today, was he arrested for
18 any offense involving matters on his phone that you found?

19 A. No.

20 Q. Can you point specifically to any evidence in this case as
21 a lead agent where my client had to induce, persuade, or entice
22 this person to do the things that they willingly posted they
23 would do? Can you point that to the jury so we can take a peek
24 at that?

25 A. Well, I would say during the times that she said no thank

1 you, I'm not the girl for you, go find an older girl, that the
2 message that that was sending was I'm not interested. So I
3 would say that Mr. Bates following that up with 13 text
4 messages over the course of three days would be trying to
5 persuade her that maybe he is the person for her or that he is
6 safe to meet with. It's a negotiation.

7 Q. Do you ever use the words "I'm not interested" anywhere in
8 there? It's a yes or no question.

9 A. Well, we discussed that. It's -- Those exact words, no.
10 Other words like no thank you, thanks anyway, though.

11 Q. You're --

12 A. Go find another girl.

13 Q. Right. You're now giving the jury your interpretation of
14 what you meant by those things. That's what you're expanding
15 upon, true?

16 A. Well, it's a conversation, and these are the way -- so
17 other undercover that I've done is working as a sex buyer and
18 communicating back and forth with people that are being sold
19 for sex. This is the nature of these conversations.

20 Q. So after you say that maybe I'm not the girl for you, you
21 then go on to after that saying you don't commit to anything
22 unless you get the details.

23 A. Correct.

24 Q. Right?

25 And you don't want anything -- no "vague shit," your

1 words. You want specifics. Time, place, how much, and what do
2 you want. You want to hear that and then you'll decide we'll
3 go make the meeting, right?

4 A. In -- in these negotiations, that is the way that a sex
5 buyer persuades a person being sold for sex that they are a
6 safe person to be with, that they have the money.

7 Q. Okay. Well, I'm not talking about like in generalities or
8 mimicking other stuff. I'm talking about the cold hard facts
9 of this case and what these words say.

10 A. And I understand. But the whole premise of this
11 investigation is to mimic actual situations to seek out men
12 that would pay a minor for sex and so that's --

13 Q. So you want to -- you want to lure them in. You yourself
14 want to entice them to come to these sites, right?

15 A. Well, opposite of that --

16 Q. That's a yes or no.

17 A. No.

18 Q. Oh. It sounds like just what you said, I think.

19 A. Well, in context that's why I would tell them go find an
20 older girl, no thank you, I'm not the girl for you. That is to
21 push them away. Mr. Bates chose to come back.

22 Q. Well, he chose to come back even though August 6th you
23 initiated that contact. We've already covered that territory,
24 right?

25 A. In response to 13 unanswered texts, we did, yes.

1 Q. Okay. Why not -- why just not respond at all?

2 A. Because again it's -- it's an investigation. He is
3 pursuing her and so I'm going to respond back. That's how we
4 again identify people in the community that will pursue paying
5 a minor for sex.

6 Q. By the way, Deputy, are you aware that the Exhibit 15,
7 which will be coming into evidence later, the cell phone
8 extraction for websites is 291 pages?

9 A. I would believe that it is. I know it was a lot of
10 information.

11 Q. All right. And no -- no evidentiary value out of those
12 291 pages came out of there? Is that fair or not?

13 A. Evidentiary in what sense? I guess lots of escort stuff,
14 but I want to more specifically know what you mean.

15 Q. It was all escort stuff.

16 A. Correct.

17 Q. Right. Do you have any information as you sit here that
18 any of these were minors?

19 MS. SMITH: Your Honor, objection. Beyond the scope
20 of direct.

21 THE COURT: I will sustain that objection.

22 BY MR. SHAPIRO:

23 Q. After reviewing all the evidence in this case, including
24 Exhibit 15, and the phone extraction, my client charged with
25 any other sex with minors or enticement that you're aware of?

1 A. No.

2 Q. I'm just about done, Deputy, and for the Court's knowledge
3 and the jury's.

4 Back to Exhibit 3, the texting conversations. At the top
5 of page 17, which is April 6th, after you reached out to him,
6 he says, "You [sic] want to get together." "I really want to
7 see u." Are you there? And your response again is, "I want
8 to."

9 Do you remember that?

10 A. Yes.

11 Q. All this other testimony you've given about, well, I tried
12 to deflect him saying I'm not the girl for you. On that date
13 on August 6th, after you reached out to him first and he says,
14 I want to get together, your response is, "I want to."

15 That's true, isn't it?

16 A. Yes.

17 Q. And as it references the whole conversation in this ad,
18 that would suggest that you want to get together to engage in
19 the various sex acts you list at different prices assuming you
20 can come to terms, fair?

21 A. I would say it references what we talked about in their
22 conversation.

23 Q. Which is in -- all of this is in response to the ad you
24 posted. True or false?

25 A. Initially, yes.

1 Q. A prostitution ad, correct?

2 A. Yes.

3 Q. Willing to do these sex acts for these prices for these
4 various times, correct?

5 A. Again, based on the female's discretion on how the
6 conversation goes is how it works so, yes.

7 Q. Okay. So you, she, ready, willing, and able to do all
8 these things so long as you -- you say it's fine, you vetted
9 the person to make sure they're not some stalker or killer
10 who's going to kidnap you. Because these people don't know
11 you're a cop, do they?

12 A. No.

13 Q. Okay.

14 A. They think I'm a 15-year-old girl.

15 Q. Right. Who is saying on the ad I'm ready, willing, and
16 able to have sex with you and these acts for these prices.
17 That's what that says, right?

18 A. Yes.

19 MR. SHAPIRO: Just one moment, if I may, please, Your
20 Honor.

21 Thank you, Deputy Miller. That's all the
22 cross-examination I have at this time.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 Ms. Smith, any redirect examination?

1 MS. SMITH: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. SMITH:

4 Q. Deputy Miller, on cross-examination you were asked quite a
5 bit about the advertisement and the fact that it indicated the
6 girl was 19.

7 With women who are sold for sex who are underage, do they
8 regularly indicate that their age is 19?

9 A. Typically, they're going to use a younger age, yes, like
10 19.

11 Q. I'm sorry, I meant women who are underage being sold for
12 sex. Will they indicate that they are 19 on the website?

13 A. Yes.

14 Q. Why?

15 A. Well, because on most of the sites, they would get -- the
16 ad would get taken down if they indicated that they were under
17 the age of 19 or 18.

18 MS. SMITH: Your Honor, may I publish Government
19 Exhibit No. 2?

20 THE COURT: You may.

21 BY MS. SMITH:

22 Q. Reviewing Government Exhibit No. 2 again, how old does she
23 indicate she is on this web page?

24 A. Nineteen.

25 Q. Okay. Now, in your professional experience, have you

1 reviewed advertisements that have been set up from minors on
2 this website?

3 A. Yes.

4 Q. And is this advertisement, Government Exhibit No. 2, set
5 up to be similar to what other minors have posted that you have
6 seen?

7 A. Yes.

8 Q. Does this web page have indicators that she might be a
9 minor?

10 A. Yes.

11 Q. And now moving --

12 MS. SMITH: Thank you, Kathy.

13 BY MS. SMITH:

14 Q. Now, moving to the text conversation, how soon was a
15 reference made to the girl's age? If it would be easier for
16 you, would you like me to pull up Exhibit No. 3?

17 A. Yes.

18 MS. SMITH: Kathy.

19 Your Honor, may I publish Exhibit 3?

20 THE COURT: You may.

21 MS. SMITH: Thank you.

22 BY MS. SMITH:

23 Q. I'll reask the question. How soon in the conversation
24 does the female make any reference to her age?

25 A. Early in the conversation on the first day stating "I can

1 only do day when my mom's at work."

2 Q. And throughout the conversation does she continue to make
3 references to her age?

4 A. Yes.

5 Q. At one point, does she explicitly say I'm 15?

6 A. Yes.

7 Q. And despite that did Mr. Bates continue to try to arrange
8 a meeting?

9 A. Yes.

10 Q. Now, you described different occasions when you gave
11 him -- you called it an out.

12 MS. SMITH: Can we go to Government Exhibit 3 at page
13 10.

14 BY MS. SMITH:

15 Q. Do you see one of those outs on this page?

16 A. Yes.

17 Q. Can you read it, please.

18 A. "Some guys like Im 15, some dont, but one got mad at me
19 for not telling so Im always honest now. If u want older girl
20 thats okay then u should go find older girl."

21 Q. And what was his immediate response?

22 A. "Are you free."

23 Q. Can we now go to page 13.

24 Deputy Miller, do you see another one of those outs on
25 this page?

1 A. Yes.

2 Q. What does it say?

3 A. The first one is, "Okay, I dont think Im the girl for u, I
4 dont commit to vague shit. Thank u anyway tho."

5 Q. Okay. And at the bottom of the page -- or what's his last
6 message on the bottom of this page?

7 A. "Let's get together."

8 Q. So again he continues to try to pursue the girl.

9 A. Correct.

10 Q. Now, there was a lot of conversation during
11 cross-examination about the things that the girl said she was
12 willing to do.

13 In your training and experience, have you reviewed a large
14 number of these types of transactions?

15 A. Yes.

16 Q. Are these types of conversations in your experience
17 one-sided?

18 MR. SHAPIRO: Objection, leading.

19 THE COURT: I'll overrule the objection.

20 A. No.

21 BY MS. SMITH:

22 Q. How do they usually go?

23 A. Well, it's a negotiation back and forth, and oftentimes
24 the sex buyer's trying to figure out is this a cop, the person
25 being sold for sex is trying to figure out is this person safe,

1 are they actually going to have the money, and then oftentimes
2 in my experience in actual investigations in these, if the
3 person being sold for sex indicates --

4 MR. SHAPIRO: Judge, I'm going to object and move to
5 strike his phrase "person being sold for sex." These are
6 prostitution websites where these people are voluntarily
7 putting their wares online for prices. To say they're being
8 sold for sex is disingenuous, move to strike.

9 THE COURT: That motion is overruled. And if you
10 have an extended objection in the future, I'd ask that we do a
11 sidebar so please proceed.

12 A. So it's two-sided in that the person buying the sex is
13 also trying to persuade the person being sold that it's going
14 to be a safe transaction and that they're going to get what
15 they need out of it.

16 BY MS. SMITH:

17 Q. Okay. Now, regarding this conversation specifically, were
18 there things Mr. Bates did to persuade the minor?

19 A. Yes.

20 Q. Does he agree to buy her alcohol?

21 A. Yes.

22 Q. Does he agree to the price?

23 A. Yes.

24 Q. Now, even further let's go --

25 MS. SMITH: Can you pull up page 14.

1 BY MS. SMITH:

2 Q. Does this appear to be part of that string of messages?

3 A. Yes.

4 Q. I want to focus on the second to last message -- full
5 message that we can see from the bottom. What does that say?

6 A. "I want to see u!!"

7 Q. And as we discussed previously, based on your training and
8 experience, could that be considered grooming?

9 MR. SHAPIRO: Objection. That would be leading.

10 THE COURT: Sustained.

11 BY MS. SMITH:

12 Q. In your training and experience, could this be considered
13 grooming?

14 MR. SHAPIRO: Same objection.

15 THE COURT: Overruled.

16 A. Yes.

17 MS. SMITH: Can we go to page 17, please.

18 BY MS. SMITH:

19 Q. Now, on cross-examination Mr. Shapiro pointed out the
20 message in the middle of the page where the female says, I want
21 to, but I'm [sic] making sure she's at work.

22 What does he say two lines before that?

23 A. "I really want to see u."

24 Q. So, again, we see him saying "I really want to see u"?

25 A. Correct.

1 Q. Did he additionally offer her drugs?

2 A. Yes.

3 Q. In your training and experience in sex trafficking crimes,
4 is offering drugs a form of persuasion?

5 A. Yes.

6 MS. SMITH: Your Honor, may I have a moment?

7 THE COURT: You may.

8 (An off-the-record discussion was had.)

9 MS. SMITH: No further questions.

10 THE COURT: As I mentioned to you previously,
11 Mr. Miller, you are subject to recall so I'll just advise you
12 not to discuss your testimony with any other witness. You are
13 excused but still subject to being recalled. You may leave.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Ms. Smith, your next witness.

16 MS. SMITH: One moment, Your Honor. Your Honor, at
17 this time the United States calls Douglas County Sheriff's
18 Office Deputy Joshua Echtinaw to the stand.

19 THE COURT: Mr. Echtinaw, if you'd please come up
20 here to the stand and you can stand next to the witness chair
21 and our courtroom deputy will swear you in.

22 THE WITNESS: Yes, Judge.

23 COURTROOM DEPUTY: Please state your full name for
24 the record and spell your full name.

25 THE WITNESS: Joshua Dean Echtinaw. Last name

1 E-c-h-t-i-n-a-w.

2 COURTROOM DEPUTY: And your first name, please.

3 THE WITNESS: Joshua.

4 COURTROOM DEPUTY: Please spell it.

5 THE WITNESS: J-o-s-h-u-a.

6 COURTROOM DEPUTY: Please raise your right hand.

7 JOSHUA ECHTINAW, PLAINTIFF'S WITNESS, SWORN

8 THE COURT: Mr. Echtinaw, you may be seated and if
9 you wish, you can take your mask off during your testimony.

10 THE WITNESS: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Good afternoon, Mr. Echtinaw. Can you tell the jury how
14 you're currently employed.

15 A. I'm a deputy with the Douglas County Sheriff's Office.

16 Q. And how long have you been in law enforcement?

17 A. Five and a half years.

18 Q. How long in this -- this current assignment?

19 A. Two years now.

20 Q. What are your job duties as a deputy with the Douglas
21 County Sheriff's Office?

22 A. I investigate vice, narcotics, and organized crime related
23 offenses.

24 Q. Were you employed in that capacity in April of 2020?

25 A. Yes.

1 Q. Were you involved in a prostitution investigation between
2 approximately April [sic] 30th of 2020 and April 6th of 2020?

3 A. Yes.

4 Q. Were you made aware that Deputy Miller was receiving text
5 messages from a phone number ending in 8951?

6 A. Yes.

7 Q. Did you learn of an arrangement to meet between Deputy
8 Miller, who was acting as the UC, and the suspect?

9 A. Yes.

10 Q. What was the meeting location?

11 A. The Kum & Go about 154th and Pacific.

12 Q. And what was your role in this investigation?

13 A. I was electronic surveillance.

14 Q. So did you go to the location?

15 A. Yes.

16 Q. And what did you do?

17 A. I set up the electronic surveillance vehicle for
18 electronic monitoring recording.

19 Q. Were you made aware what type of vehicle you were watching
20 for?

21 A. Yes.

22 Q. How were you made aware of that?

23 A. During the briefing.

24 Q. Can you describe for the jury what a briefing entails.

25 A. A briefing entails what the operation is, what time, the

1 location, suspect, if we have a suspect, any listed vehicles,
2 and then what potential enforcement actions are to happen.

3 Q. When you were conducting surveillance at the Kum & Go at
4 154th and Pacific, were you recording what you were observing
5 in any way?

6 A. Yes.

7 Q. How?

8 A. We have a electronic recording system called ViewCommander
9 that uses several different cameras to record the surroundings
10 of the vehicle.

11 Q. And when you were doing this surveillance, did you observe
12 the suspect's vehicle arrive?

13 A. Yes.

14 Q. Okay. And was that captured on your camera?

15 A. Yes.

16 MS. SMITH: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MS. SMITH:

19 Q. Deputy Echtinaw, I've handed you what's been marked as
20 Government Exhibit 6. Do you recognize this exhibit?

21 A. Yes.

22 Q. What is it?

23 A. This is a surveillance disc from the camera from 154th and
24 Pacific.

25 Q. Is this the -- a true and accurate copy of the

1 surveillance video you recorded on April 6th of 2020?

2 A. Yes.

3 MS. SMITH: Your Honor, at this time I would move to
4 admit Exhibit 6.

5 MR. SHAPIRO: No objection to 6, Your Honor.

6 THE COURT: Exhibit 6 is admitted.

7 MS. SMITH: Your Honor, may I approach?

8 THE COURT: You may.

9 MS. SMITH: Your Honor, at this time I would move to
10 publish Government Exhibit 6.

11 THE COURT: You may.

12 (Exhibit 6 was played.)

13 BY MS. SMITH:

14 Q. Deputy Echtinaw, in the left-hand middle of the video,
15 there appears to be a red Jeep. Was that the suspect vehicle?

16 A. Yes.

17 Q. Based on your surveillance, did he get out of the vehicle
18 at any time?

19 A. Yes. Once law enforcement made contact.

20 Q. Okay. So at some point -- as we're watching the video, at
21 some point does law enforcement make contact with him?

22 A. Yes.

23 Q. Is that the law enforcement vehicles approaching?

24 A. Yes.

25 Q. And at that point in time, was he taken into custody?

1 A. Yes.

2 Q. So based on your surveillance, before these vehicles
3 approached and he was taken into custody, did anyone else enter
4 his vehicle?

5 A. No.

6 Q. Did anyone leave his vehicle?

7 A. No.

8 MS. SMITH: No further questions, Your Honor.

9 THE COURT: Cross-examination.

10 MR. SHAPIRO: Your Honor, I have no cross-examination
11 of Deputy Echtinaw.

12 THE COURT: Okay. Deputy Echtinaw -- I'll ask the
13 prosecution. Does this -- does this witness need to remain
14 available for later testimony?

15 MS. SMITH: No, Your Honor.

16 THE COURT: Okay. May the witness be released from
17 the defense's perspective?

18 MR. SHAPIRO: Of course, Your Honor.

19 THE COURT: Okay. Deputy Echtinaw, your testimony is
20 complete. If you'd put on your mask, you may leave the
21 courtroom. Just remind you that you may not discuss your
22 testimony with any other witness.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Ms. Smith, your next witness.

25 MS. SMITH: Your Honor, at this time the government

1 calls Douglas County Sheriff's Office Lieutenant William
2 Niemack.

3 THE COURT: Mr. Niemack, you may come on up here to
4 the witness stand, stand next to the witness chair, and at that
5 point in time, the courtroom deputy will swear you in.

6 THE WITNESS: Okay. Thank you, sir.

7 COURTROOM DEPUTY: Please state your full name for
8 the record and spell your full name.

9 THE WITNESS: William Charles Niemack. W-i-l-l-i-a-m
10 C-h-a-r-l-e-s N-i-e-m-a-c-k.

11 WILLIAM NIEMACK, PLAINTIFF'S WITNESS, SWORN

12 THE COURT: Officer, you may be seated and if -- you
13 may remove your mask during your testimony if you wish.

14 THE WITNESS: Thank you.

15 DIRECT EXAMINATION

16 BY MS. SMITH:

17 Q. Good afternoon, Officer Niemack. Can you tell the jury
18 how you're currently employed.

19 A. I'm a lieutenant with Douglas County Sheriff's Office.

20 Q. And how long have you worked in law enforcement?

21 A. All together with Douglas County and also Kearney Police
22 Department since 1997.

23 Q. And how long have you been in your current assignment?

24 A. I've been with the sheriff's office since December 6th,
25 1999, and I've been assigned as a lieutenant for the past three

1 years, as a narcotics and K-9 interdiction sergeant for five
2 years prior to that, and the ten years prior to that, I was a
3 criminal investigator as a deputy.

4 Q. What are some of your job duties as a lieutenant with the
5 Douglas County Sheriff's Office?

6 A. My current assignment is as the commander for the criminal
7 investigation division. That division has four teams. One of
8 which is the vice, narcotics, and organized crime unit, excuse
9 me. They're responsible for the narcotics and vice or human
10 trafficking related investigations.

11 And then three other teams which include the K-9
12 interdiction unit, the criminal or major crimes unit, and also
13 the crime suppression unit.

14 Q. Okay. As part of your duties, were you involved in a
15 prostitution investigation between approximately March 30th of
16 2020 and April 6th of 2020?

17 A. Yes.

18 Q. Were you aware that Deputy Miller was receiving text
19 messages from a phone number ending in 8951?

20 A. Yes.

21 Q. Did you learn of an arrangement to meet between Deputy
22 Miller acting as an undercover officer and the suspect?

23 A. Yes.

24 Q. What was the location of that meeting?

25 A. It was at a Kum & Go convenience store located near 155th

1 and Pacific Street.

2 Q. And what was your role in this operation?

3 A. As lieutenant I was the commander in charge of the overall
4 supervision of the operation, and in this particular operation,
5 I also -- due to the need of a uniform person at the scene, I
6 dressed in full uniform and was in a marked cruiser.

7 Q. At some point in time, did you go to the agreed-upon
8 location?

9 A. Yes.

10 Q. Did you -- Prior to going to the location, were you
11 debriefed and made aware of what vehicle you were looking for?

12 A. Yes.

13 Q. Were you also made aware of who the suspect was?

14 A. Yes.

15 Q. When you were at the meeting location, did you observe
16 Mr. Bates's vehicle in the area?

17 A. I was parked away from the location because I was in a
18 marked unit, but our surveillance units noted the vehicle
19 arriving and called out the plate number which matched the
20 information that we had during the briefing and had consistent
21 and constant visual of that vehicle.

22 Q. So what did you do then?

23 A. Once I was notified that the vehicle had parked at that
24 convenience store, then I moved from that concealed location to
25 make contact with the occupants of the vehicle.

1 Q. And was it you personally that made contact with the
2 occupant of the vehicle?

3 A. Yes. The initial contact was me.

4 Q. Okay. And how many occupants were there in that vehicle?

5 A. One.

6 Q. Who was it?

7 A. It was the person that we had expected, Jason Bates.

8 Q. Now, when you made contact with Mr. Bates, did you ask
9 Mr. Bates to step out of his vehicle?

10 A. Yes.

11 Q. Okay. Were you -- excuse me. What happened then?

12 A. Myself, Deputy Jason Stehlik and Sergeant Travis Whitten
13 were at the driver's side door of the vehicle. We asked
14 Mr. Bates to exit the vehicle. At that time I placed handcuffs
15 on Mr. Bates and escorted him away back towards my -- where the
16 marked unit or the cruiser was parked.

17 Q. Do you see Mr. Bates in the courtroom today?

18 A. I do.

19 Q. Can you point out where he's sitting and identify a item
20 of clothing he's wearing.

21 A. He's seated to my left at the table with a black polo
22 shirt.

23 MS. SMITH: Your Honor, let the record reflect that
24 the witness has identified the defendant.

25 THE COURT: So noted.

1 MS. SMITH: No further questions.

2 THE COURT: Any cross-examination?

3 MR. SHAPIRO: Your Honor, I have no questions of
4 Lieutenant Niemack. He may be excused.

5 THE COURT: All right. And, Ms. Smith, may this
6 witness be excused from the subpoena?

7 MS. SMITH: Yes, Your Honor.

8 THE COURT: Officer Niemack, your testimony is
9 completed. I just remind you, you may not discuss your
10 testimony with any other witness in this case. You are
11 released. Thank you.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Ms. Smith, your next witness.

14 MR. KLEINE: Your Honor, if I may, at this time the
15 government would call Sergeant Travis Whitten of the Douglas
16 County Sheriff's Office and I will conduct that examination.

17 THE COURT: Okay. Thank you.

18 Officer Whitten, you may come up here to the witness stand
19 and stand right next to the witness chair and at that point the
20 courtroom deputy will swear you in.

21 COURTROOM DEPUTY: Please state your full name for
22 the record and spell your full name.

23 THE WITNESS: Travis L. Whitten, W-h-i-t-t-e-n.

24 COURTROOM DEPUTY: Please spell your first name.

25 THE DEFENDANT: Oh, I'm sorry. Travis, T-r-a-v-i-s.

1 TRAVIS L. WHITTEN, PLAINTIFF'S WITNESS, SWORN

2 THE COURT: Officer, you may be seated. You may
3 remove your mask if you wish during your testimony.

4 You may proceed, Mr. Kleine.

5 MR. KLEINE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. KLEINE:

8 Q. Sergeant Whitten, would you please introduce yourself to
9 the members of the jury.

10 A. Sergeant Travis Whitten. I work for the vice, narcotic,
11 and human trafficking unit in the Douglas County Sheriff's
12 Office.

13 THE COURT: And, Officer Whitten, would you just
14 scoot forward so that microphone is closer to your mouth.

15 THE WITNESS: Sorry.

16 THE COURT: Thank you.

17 BY MR. KLEINE:

18 Q. Sergeant, how long have you held that position?

19 A. I've been in that position for two years.

20 Q. Can you tell the jury some of the duties and
21 responsibilities that you have on a day-to-day basis.

22 A. As I -- I said, I supervise narcotics transactions and
23 human trafficking operations, do surveillance, and other video
24 surveillance type tasks.

25 Q. You mentioned human trafficking. Does that also include

1 child exploitation related criminal activity?

2 A. Yes.

3 Q. And are those crimes that occur -- that you investigate
4 occur within the Douglas County area in Nebraska?

5 A. Yes.

6 Q. Sergeant, I want to turn your attention to April 6th of
7 2020. Were you involved in an investigation at that point in
8 time involving an individual identified as Jason Bates?

9 A. Yes. Deputy Chad Miller was the investigating officer in
10 that case and I was his supervisor.

11 Q. Can you tell the jury specifically what your role was in
12 that investigation on April 6th of 2020?

13 A. I was in charge of overall operational security as far as
14 the -- the operation that was done at the Kum & Go for Chad's
15 operation. I was also involved with taking pictures of
16 evidence and property.

17 Q. Let's take that one step at a time. The April 6th, 2020,
18 date, did you have an understanding as to that being the date
19 that Mr. Bates was supposed to meet up with Deputy Miller who
20 was acting in an undercover capacity?

21 A. Yes.

22 Q. And you indicated that this meet-up -- was it scheduled to
23 occur at a Kum & Go type gas station?

24 A. That's correct.

25 Q. And is that gas station located in Omaha, Nebraska?

1 A. Yes, it is.

2 Q. Around 154th and Pacific?

3 A. Yes.

4 Q. You mentioned that your role with regard -- or one of your
5 roles with that investigation was operational security. Can
6 you explain for the jury what that means?

7 A. So as for the operation, we just make sure that for
8 officer safety and -- and public safety that we have enough
9 officers in the -- on the -- in the location. We have enough
10 officers that can actually observe and identify who we're
11 looking for and -- and make sure that the whole operation goes
12 in a safe capacity where nobody gets hurt.

13 Q. Prior to you performing the work you identified on that
14 investigation that day, was there a briefing with other
15 officers to discuss the various roles that each was to have?

16 A. Yes. We always do an operational briefing prior to the
17 event.

18 Q. At some point, however, did you go to a staging area near
19 the Kum & Go at 154th and Pacific Street?

20 A. We -- we went -- the staging area because it's -- it is
21 already close to the sheriff's office was getting set up at
22 the -- at the Kum & Go or in the surrounding areas within a
23 couple blocks.

24 Q. At some point, however, you did, I assume, travel to the
25 154th and Pacific location?

1 A. Yes.

2 Q. When you arrived in that area, were you stationed within
3 the confines of the parking lot or were you somewhere else?

4 A. I moved around. Where people -- Some people were in the
5 parking lot. I was a couple blocks away, and then just prior
6 to Mr. Bates arriving, then I moved into the parking lot and
7 that's where I parked.

8 Q. How were you dressed that day?

9 A. I was in plain clothes.

10 Q. And is there a reason for that?

11 A. Just so we don't stand out to the public.

12 Q. Were you in a marked cruiser that had lights or were you
13 in more of a -- a plain type car that was -- appeared to be
14 normal for the parking lot?

15 A. I was in a plain vehicle. We had one marked cruiser in
16 the area to make contact, but I was in a plain vehicle.

17 Q. At some point that day, did Mr. Bates show up?

18 A. Yes.

19 Q. Do you recall whether that was in the morning or the
20 afternoon time?

21 A. It was in the afternoon.

22 Q. So it was light out?

23 A. Yes.

24 Q. Did you have an opportunity to observe the vehicle that he
25 was driving?

1 A. Yes, I did.

2 Q. And can you describe that vehicle?

3 A. It was a red -- smaller red Jeep SUV. It stood out
4 because it had plates -- license plates that said -- it's
5 supposed to mean Raiders on that.

6 Q. When Mr. Bates arrived at that location, did he park the
7 vehicle?

8 A. Yes.

9 Q. After he parked the vehicle, was he then encountered by
10 other law enforcement officers?

11 A. Yes.

12 Q. Were you part of that initial encounter?

13 A. Yes.

14 Q. Tell us about what happened when you initially encountered
15 Mr. Bates.

16 A. So it was called out that the vehicle and the subject that
17 we believed we were looking for had showed up at the -- at the
18 convenience store. At that point the marked vehicle to ensure
19 that they know who -- that we're sheriffs came in and parked
20 directly in front of Mr. Bates's vehicle, activated its lights,
21 and then myself and another deputy who were dressed in plain
22 clothes also approached the vehicle.

23 Q. When you approached the vehicle, did you have some sort of
24 badge like you are wearing today to show that you were law
25 enforcement?

1 A. Yes, I was wearing this exact badge.

2 Q. Did you have the opportunity to interact with Mr. Bates
3 that day?

4 A. I was standing next to him, but I don't recall having any
5 significant conversations with him.

6 Q. Do you recognize Mr. Bates in the courtroom here today?

7 A. Yes.

8 Q. Can you identify where he's seated and identify an article
9 of clothing that he's wearing.

10 A. At the defense table in a black polo shirt.

11 MR. KLEINE: Your Honor, we'd ask the record reflect
12 that the witness has identified the defendant.

13 THE COURT: So noted.

14 BY MR. KLEINE:

15 Q. After you encountered Mr. Bates, was he then taken away
16 from his vehicle?

17 A. He was.

18 Q. And what's the purpose of that?

19 A. It's just -- again, it's an officer safety thing where we
20 take out and detain, and then based upon the investigation that
21 Deputy Miller had done, that we -- he talks to them, tries to
22 interview them.

23 Q. Okay. So Mr. Bates is removed from that area that you
24 were at. Did you take any further steps in your investigation
25 at that point?

1 A. Yes. I was part of recovering the property or the -- from
2 the vehicle and taking pictures of the suspect vehicle.

3 Q. Was the vehicle secured also as well at that time?

4 A. Yes.

5 Q. Was it secured by law enforcement?

6 A. After the fact or...

7 Q. After Mr. Bates left the area?

8 A. Oh, yes.

9 Q. Okay. And can you explain for the jury why it is that law
10 enforcement wants to -- wanted to secure his vehicle at that
11 time?

12 A. To make sure that all his personal property is -- is safe
13 and not going to be taken by anybody else.

14 MR. KLEINE: Okay. Your Honor, may I approach the
15 witness? I have a number of exhibits I'd like to show him.

16 THE COURT: You may.

17 MR. KLEINE: Thank you.

18 THE COURT: If you would please put on your mask when
19 you come up here.

20 MR. KLEINE: Oh, absolutely, Your Honor. I
21 apologize.

22 THE COURT: I'm looking forward to the day when we
23 don't have to put them on.

24 THE WITNESS: Would you like me to put mine on too?

25 THE COURT: You can leave yours off since he has his

1 on.

2 BY MR. KLEINE:

3 Q. Sergeant Whitten, I've put a number of exhibits before you
4 and the first one I'd like to talk to you about is Government
5 Exhibit No. 7. Could you take a look at that exhibit and let
6 me know if you recognize what it is.

7 A. I recognize it. It's the red Jeep that Mr. Bates was
8 driving.

9 Q. Is that a photo of that Jeep?

10 A. Yes, it is.

11 Q. Is the photo that's identified in Government Exhibit No. 7
12 something that you actually took?

13 A. Yes.

14 Q. You indicated earlier in your testimony that one of your
15 responsibilities was to photograph the area; is that correct?

16 A. Yes.

17 Q. After you photographed the Jeep you've just described,
18 what did you do with that photograph?

19 A. Those photographs get downloaded and put into the case
20 file.

21 Q. And is that a standard procedure that is used when
22 documenting a scene such as the one on April 6th, 2020?

23 A. Yes.

24 Q. How did you photograph that vehicle?

25 A. It was done with a cell phone.

1 Q. Okay. Again, standard procedure by the Douglas County
2 Sheriff's Office to use that technique?

3 A. Yes.

4 Q. Why do you photograph?

5 A. It's just to -- a couple of things. To ensure that the
6 vehicle isn't damaged, to accurately preserve it as we found
7 it.

8 Q. It's also evidence, correct?

9 A. Yes.

10 Q. The photograph of the Jeep that's identified on Government
11 Exhibit No. 7, is that a true and accurate depiction of that
12 vehicle which you described as it existed on April 6th of 2020?

13 A. Yes, it is.

14 MR. KLEINE: Your Honor, at this time we'd offer
15 Government Exhibit No. 7.

16 MR. SHAPIRO: No objection to 7, Your Honor.

17 THE COURT: Exhibit 7 is admitted.

18 MR. KLEINE: May we publish, Your Honor?

19 THE COURT: You may.

20 MR. KLEINE: Thank you.

21 BY MR. KLEINE:

22 Q. Again, Sergeant, on the overhead in front of you and in
23 the exhibit itself in front of you should show you Government
24 Exhibit No. 7. Is that the Jeep that you were referring to?

25 A. Yes.

1 Q. And is that the license plate that you also described
2 earlier?

3 A. Yes.

4 Q. Now, after you secured the Jeep that you've discussed, was
5 a search conducted of the interior of the Jeep?

6 A. Yes, it was.

7 Q. Were photographs also obtained of the interior of that
8 Jeep?

9 A. Yes, they were.

10 Q. Similar line of questioning, why is that done?

11 A. It's done to -- to document evidence that is found and to
12 document other personal property.

13 Q. And were those photographs that were taken of the inside
14 of the Jeep, were those taken by you?

15 A. Yes.

16 Q. Were they taken using that same cell phone that you
17 previously described?

18 A. Yes, they were.

19 Q. After those photographs were taken, were they subsequently
20 transferred to a law enforcement computer and stored?

21 A. Yes.

22 Q. When the search of the vehicle was performed, were there
23 items of interest that law enforcement identified?

24 A. Yes.

25 Q. Can you describe those for the jury?

1 A. The -- the items that were identified within the vehicle
2 were a cell phone, some Fireball shooters, and some
3 prescription medication.

4 Q. And photos were taken of each of those items?

5 A. Yes.

6 Q. I'd have you take a look at Government Exhibit No. 8 if
7 you could, sir.

8 A. (Witness complies.)

9 Q. Are you there?

10 A. Yes.

11 Q. Do you recognize what's depicted in Government Exhibit
12 No. 8?

13 A. Yes.

14 Q. Can you identify what that is, please?

15 A. This is the -- from the passenger side of -- of
16 Mr. Bates's vehicle. It is the -- it is the front seat of the
17 area or the -- of the vehicle.

18 Q. It's the interior picture?

19 A. Yes.

20 Q. Is that a true and accurate depiction of the interior of
21 that Jeep as it existed on April 6th, 2020, when you took that
22 picture?

23 A. Yes, it is.

24 MR. KLEINE: At this time, Your Honor, I'd offer
25 Government Exhibit No. 8.

1 MR. SHAPIRO: No objection to 8, Your Honor.

2 THE COURT: Exhibit 8 is admitted.

3 MR. KLEINE: Your Honor, may I publish?

4 THE COURT: You may.

5 MR. KLEINE: Thank you.

6 BY MR. KLEINE:

7 Q. All right, Sergeant. Let's talk briefly about Government
8 Exhibit No. 8. I think you testified this was taken from the
9 passenger side of that Jeep; is that correct?

10 A. That's correct.

11 Q. And if we expand a bit upon -- let's just start with the
12 passenger seat. What did you observe when you took this
13 picture?

14 A. On the passenger seat, there was alcohol, two Fireball
15 shooters.

16 Q. Did you also observe anything on the console?

17 A. Yes. The cell phone.

18 Q. Okay. During the course of the search of the Jeep, I
19 think you also identified pill bottles; is that correct?

20 A. That's correct.

21 Q. Okay. Did you photograph those?

22 A. I did.

23 Q. And could you look at Government Exhibit No. 9, please.

24 A. (Witness complies.)

25 Q. Do you recognize what's depicted in that exhibit?

1 A. Yes.

2 Q. Can you identify what it is?

3 A. These are two prescription medications that were found
4 within the vehicle.

5 Q. In Mr. Bates's vehicle?

6 A. That's correct.

7 Q. Are those -- is that picture a true and accurate depiction
8 of the pill bottles as they existed on April 6th of 2020?

9 A. Yes.

10 MR. KLEINE: Your Honor, we'd offer Government
11 Exhibit No. 9.

12 MR. SHAPIRO: No objection to 9, Your Honor.

13 THE COURT: Exhibit 9 is admitted.

14 MR. KLEINE: May I publish, Your Honor?

15 THE COURT: You may.

16 MR. KLEINE: Thank you.

17 BY MR. KLEINE:

18 Q. Sergeant Whitten, we put on the overhead Exhibit No. 9
19 which you described. Can you again tell the members of the
20 jury what we're looking at here.

21 A. Those are two prescription pill bottles that were found in
22 Mr. Bates's vehicle.

23 Q. And approximately -- do you recall where in the vehicle?

24 A. They were found in the -- in the console of the vehicle.

25 Q. The Fireball shooters, which we have -- which you

1 discussed in Government Exhibit No. 8, and the pill bottles,
2 which were discussed in Government Exhibit No. 9, were both of
3 those obtained and seized by law enforcement?

4 A. Yes.

5 Q. And, again, why does law enforcement take things of that
6 nature?

7 A. For -- for evidentiary purposes.

8 Q. I'd ask you now to look at Government Exhibit No. 10 which
9 should also be before you.

10 A. (Witness complied.)

11 Q. Do you recognize what Government Exhibit No. 10 is?

12 A. Yes.

13 Q. Can you explain what it is?

14 A. These were the -- the two Fireball shooters that were
15 found on the seat in Mr. Bates's vehicle.

16 Q. Are those two Fireball shooters identified as Government
17 Exhibit No. 10 in the same or substantially the same condition
18 as when they were found in his vehicle on April 6th, 2020?

19 A. Yes.

20 Q. And I'm talking about Mr. Bates's vehicle.

21 A. Yes.

22 Q. Thank you.

23 MR. KLEINE: At this time we'd offer Government
24 Exhibit No. 10.

25 MR. SHAPIRO: No objection to 10, Your Honor.

1 THE COURT: Exhibit 10 is admitted.

2 BY MR. KLEINE:

3 Q. And lastly I'd ask that you take a look at Government
4 Exhibit No. 11 if you could, sir.

5 A. (Witness complied.)

6 Q. Can you identify what that exhibit is?

7 A. Yes. Those are the two pill bottles that were found in
8 Mr. Bates's vehicle.

9 Q. Are the two pill bottles identified as Government
10 Exhibit 11 in the same condition today or substantially the
11 same condition today as when they were found in the vehicle,
12 Mr. Bates's vehicle on April 6th, 2020?

13 A. Yes.

14 MR. KLEINE: At this time we'd offer Government
15 Exhibit No. 11, Your Honor.

16 MR. SHAPIRO: No objection to 11, Your Honor.

17 THE COURT: Exhibit 11 is admitted.

18 BY MR. KLEINE:

19 Q. Sergeant Whitten, after the vehicle was searched and the
20 evidence that we've discussed was removed, what was done with
21 that property?

22 A. The property is then taken to the Douglas County Sheriff's
23 Office and booked into our property and evidence room.

24 Q. And is that to ensure a -- that the evidence is stored
25 properly?

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1 A. Yes.

2 Q. And that it's in a secured environment?

3 A. Yes.

4 Q. Was that done in this case?

5 A. It was.

6 Q. After you performed that work which you've already
7 discussed on April 6th, 2020, were you involved in any other
8 aspect of this investigation?

9 A. No.

10 MR. KLEINE: Your Honor, I don't have any further
11 questions for Sergeant Whitten at this time.

12 Thank you.

13 THE COURT: Okay. I'll now ask if there's any
14 cross-examination.

15 MR. SHAPIRO: Your Honor, I have no cross-examination
16 of Sergeant Whitten.

17 THE COURT: Okay. I'll ask the prosecution,
18 Mr. Kleine, may this witness be excused?

19 MR. KLEINE: Yes, please, Your Honor.

20 THE COURT: Any objection to being completely excused
21 from the defense?

22 MR. SHAPIRO: No objection to that, Your Honor.

23 THE COURT: Okay. Officer, you are -- your -- your
24 testimony is completed. You're no longer needed at this trial.
25 At this point in time, you may put your mask on and leave.

1 I'll just remind you not to discuss your testimony with any
2 other witness.

3 THE WITNESS: All right. Thank you.

4 THE COURT: You may leave.

5 I'll hear from the government, your next witness.

6 MR. KLEINE: Thank you, Your Honor. At this time the
7 government calls Lieutenant Nathan Kovarik with the Douglas
8 County Sheriff's Office.

9 THE COURT: Okay.

10 MR. KLEINE: Your Honor, may I approach the witness
11 stand and retrieve those exhibits?

12 THE COURT: You may.

13 MR. KLEINE: I'm also going to bring up additional
14 exhibits just to avoid having --

15 THE COURT: That sounds great.

16 MR. KLEINE: All right.

17 THE COURT: Officer, you may come up here to the
18 witness stand and stand next to the witness chair, and at that
19 point in time, our courtroom deputy will swear you.

20 COURTROOM DEPUTY: Please state your full name for
21 the record and spell your first and last name.

22 THE WITNESS: Nathan Kovarik. N-a-t-h-a-n
23 K-o-v-a-r-i-k.

24 NATHAN KOVARIK, PLAINTIFF'S WITNESS, SWORN

25 THE COURT: You may be seated.

1 MR. KLEINE: Your Honor, I was a little slow on my
2 game. I -- I think we have the exhibit up here that I was
3 looking for. May I approach?

4 THE COURT: Okay. You may.

5 MR. KLEINE: Okay. Thank you.

6 May I proceed?

7 THE COURT: You may.

8 MR. KLEINE: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. KLEINE:

11 Q. Lieutenant, would you please introduce yourself to the
12 members of the jury.

13 A. I'm Lieutenant Nathan Kovarik with the Douglas County
14 Sheriff's Office.

15 Q. Lieutenant, how long have you been a member of that police
16 force?

17 A. Eighteen years.

18 Q. What is your current position?

19 A. I'm currently the lieutenant in charge of the court
20 services bureau.

21 Q. What does that involve?

22 A. I oversee court security operations for our district court
23 division, county court divisions, building security division,
24 and entrance security division.

25 Q. Is that on the state court level or the federal level?

1 A. The state level.

2 Q. So you would be working right up the street here at
3 Douglas County District Court?

4 A. Yes.

5 Q. Prior to your position up the street in Douglas County,
6 were you working in another capacity?

7 A. Yes. I was promoted in January. Before that I was
8 working as the sergeant for our criminal investigations
9 division.

10 Q. So that would have taken us back to at least April of
11 2020; is that fair?

12 A. Yes.

13 Q. Can you tell the members of the jury some of the duties
14 and responsibilities that you had in that position.

15 A. I oversaw our afternoon investigators, there was about
16 four investigators that I supervised, and I would also assist
17 on investigations. I also would help with phone extractions as
18 part of my duties.

19 Q. The investigators that you supervised back in April of
20 2020, did that include individuals who were investigating human
21 trafficking related crimes --

22 A. Yes.

23 Q. -- including child exploitation?

24 A. Yes.

25 Q. You also mentioned, Lieutenant, that at the time you were

1 assisting with the processing and handling of digital evidence?

2 A. Yes.

3 Q. And I think you referenced cell phones; is that correct?

4 A. Yes.

5 Q. Over the course of your career, have you received specific
6 training as it relates to processing and handling of digital
7 evidence such as cell phones?

8 A. Yes.

9 Q. Can you explain for the jury what that training has been.

10 A. I received my basic training at the Nebraska Law
11 Enforcement Training Center in 2003. Over the course of my
12 career, I've taken about 112 hours of computer forensic
13 training through the National White Collar Crime Center; I've
14 also taken 40 hours of Cellebrite training through -- that was
15 a -- through Cellebrite; and I've had five hours of
16 recertification training in Cellebrite; and I also completed my
17 master's degree in cybersecurity from Bellevue University.

18 Q. Lieutenant, I want to turn your attention now specifically
19 to the April 6th time period of 2020. Around that time period
20 were you asked to assist with an investigation involving the
21 defendant, Jason Bates?

22 A. Yes.

23 Q. What was your role in that investigation?

24 A. I conducted the forensic extraction of his -- of his cell
25 phone.

1 Q. Do you recall the type of cell phone that that was?

2 A. It was an Apple iPhone.

3 Q. What was the purpose of the work that you were doing on
4 that cell phone?

5 A. To extract evidence of the investigation that they were
6 working on.

7 Q. Were you asked to make a forensic copy of whatever was on
8 that cell phone so that law enforcement could then review and
9 inspect what was on that phone?

10 A. Yes.

11 Q. Now, were you present at the time of Mr. Bates's encounter
12 with law enforcement on April 6th, 2020?

13 A. No.

14 Q. Do you recall when it was that you were first asked to
15 work on this case?

16 A. April 9th.

17 Q. Okay. Lieutenant, before you we have identified what's
18 been previously received into evidence as Government Exhibit
19 No. 14. Could you take a look at that.

20 A. (Witness complied.) It's the Apple iPhone.

21 Q. Okay. Was that the Apple iPhone that you were asked to
22 take a look at on behalf of the Douglas County Sheriff's
23 Office?

24 A. Yes.

25 Q. Do you recall how you had received that iPhone?

1 A. I received it from Deputy Chad Miller.

2 Q. And when you received it from Deputy Miller, was there
3 something that he asked you specifically to do with that phone?

4 A. Yes. To conduct a forensic extraction of the phone.

5 Q. Generally speaking, after you receive a phone such as
6 Government Exhibit 14, what is the process that is used to
7 forensically copy it?

8 A. The first step would be to ensure the phone is in airplane
9 mode. If it's not in airplane mode, you would put it in
10 airplane mode. And then from that point, you would attach it
11 to the Cellebrite software and go through the -- the process of
12 extracting it through Cellebrite.

13 Q. All right. Let's start with step one, the airplane mode.
14 Why is that done?

15 A. To ensure that data is not changed or added to the phone.

16 Q. Okay. So it's to preserve the evidence?

17 A. Yes.

18 Q. Oh, excuse me, I apologize. To preserve the -- the
19 digital evidence on the phone?

20 A. Yes.

21 Q. Okay. And in this case when you received Government
22 Exhibit No. 14 from Deputy Miller, was it already in airplane
23 mode?

24 A. Yes.

25 Q. And, again, that was so that the evidence was properly

1 preserved?

2 A. Yes.

3 Q. After you received Government Exhibit No. 14, did you then
4 utilize -- I think you referenced something called Cellebrite?

5 A. Yes.

6 Q. And is that a law enforcement tool?

7 A. Yes, it is.

8 Q. What is that tool specifically designed to do?

9 A. To forensically extract data off of cell phones and
10 tablets.

11 Q. Is that a tool that is a standard tool that is used by law
12 enforcement to extract information from cell phones?

13 A. Yes.

14 Q. Is that something that has been used by Douglas County
15 Sheriff's Office in the past?

16 A. Yes.

17 Q. And is it still something that is being used today?

18 A. Yes.

19 Q. Now, I think you mentioned that you had received specific
20 training in Cellebrite; is that correct?

21 A. Yes.

22 Q. And you referenced how many hours?

23 A. Forty hours of initial certification and then there was
24 five hours of recertification in 2019.

25 Q. In April of 2020, was your certification in Cellebrite up

1 to date?

2 A. Yes.

3 Q. Can you explain for the members of the jury what the
4 Cellebrite tool does when it's forensically imaging a cell
5 phone.

6 A. Sure. So what it does is you -- you attach the phone to
7 a -- one of our laptops that has the Cellebrite software loaded
8 on it, and then there's a -- just a series of directions. You
9 tell Cellebrite what phone it is, and then it goes through an
10 automated process of extracting the information off of the
11 phone.

12 Q. In a secure fashion?

13 A. Yes.

14 Q. And does that program work to avoid a situation where the
15 phone is plugged into a computer and data on the phone is
16 changed or manipulated?

17 A. Yes.

18 Q. And that's what it's designed for, correct?

19 A. Correct.

20 Q. Now, when it does this forensic imaging of a cell phone,
21 does the Cellebrite tool only capture data that's on the phone?

22 A. Yes.

23 Q. It doesn't reach up to the cloud or other digital devices
24 to obtain information, does it?

25 A. No.

1 Q. Okay. So if somebody on their cell phone has data that is
2 deleted or they clear their web browsing history and then that
3 memory is subsequently overwritten by other data, it's never
4 going to be recovered, is it?

5 A. Correct.

6 Q. You can only -- or excuse me. The Cellebrite only
7 recovers what's actually on the phone.

8 A. That's correct.

9 Q. Over the course of your career, how many cell phones have
10 you forensically imaged using Cellebrite?

11 A. About 50.

12 Q. And when a phone is imaged using that tool, if there is an
13 error or it's not done correctly, are you made aware of that as
14 the tech who's performing that function?

15 A. Yes. The Cellebrite program puts an error message on the
16 screen notifying you that there's been a problem.

17 Q. So that in the event there's a problem, you can try and
18 figure out what it is because you're trying to ensure that the
19 data being extracted matches what's on the phone, correct?

20 A. True, yes.

21 Q. How long do those extractions typically take?

22 A. About an hour.

23 Q. Can they take longer?

24 A. Yes.

25 Q. Take shorter?

1 A. Yes.

2 Q. Does it just depend on how much data's actually on the
3 phone?

4 A. Yes.

5 Q. After an extraction is completed using that tool, what is
6 then done with the phone?

7 A. The phone's returned to property and evidence.

8 Q. Okay. In a secure fashion?

9 A. Yes.

10 Q. To ensure that it's -- the data's saved and not
11 compromised?

12 A. Correct.

13 Q. What is done with the extraction itself?

14 A. It's loaded onto a thumb drive and then provided to the
15 investigator.

16 Q. Specifically with regard to Government Exhibit No. 14, did
17 you follow the process which you just described when you
18 forensically copied that phone?

19 A. Yes.

20 Q. Again, if you could explain for the jury the steps that
21 you took to ensure that Government Exhibit No. 14 was
22 forensically analyzed in a correct and proper manner.

23 A. Sure. So I took this phone, I used our -- our Cellebrite
24 laptop that we have and went through the automated process of
25 the phone. I ensured that it was in airplane mode, and after

1 the -- the software had completed the extraction, I took the
2 report, it's -- it's in a digital form, and I put that on a
3 thumb drive, I provided that to Deputy Miller.

4 Q. Okay. Any error messages indicating that the data from
5 Exhibit No. 14 was not properly imaged?

6 A. No.

7 Q. Okay. Now, you've -- have you had a chance to review the
8 Cellebrite information that was withdrawn or imaged from that
9 cell phone?

10 A. Yes.

11 Q. And before you is Government Exhibit No. 18. Can you take
12 a look at that exhibit.

13 A. (Witness complied.)

14 Q. Now, you're looking at a -- a thumb drive, but can you
15 tell what that -- Government Exhibit No. 18 is?

16 A. It's the forensic extraction from Jason Bates' phone.

17 Q. How do you know that?

18 A. Because I reviewed it the other day in your office.

19 Q. Okay. And did you note your initials and a date on this?

20 A. Yes, put my initials and the date.

21 Q. After you had a chance to review that extraction, were you
22 able to confirm in fact the data on Government Exhibit No. 18
23 was taken from Government Exhibit No. 14, which is Mr. Bates's
24 phone?

25 A. Yes.

1 Q. Is what is contained on Government Exhibit No. 18 a true
2 and accurate copy of Mr. Bates's phone identified as Government
3 Exhibit 14?

4 A. Yes.

5 Q. And that's a true and accurate copy as of the date that it
6 was provided to you; is that fair?

7 A. Yes.

8 MR. KLEINE: At this time, Your Honor, we'd offer
9 Government Exhibit No. 18.

10 MR. SHAPIRO: There's no objection to 18, Your Honor.

11 THE COURT: Exhibit 18 is received.

12 MR. KLEINE: Thank you, Your Honor.

13 BY MR. KLEINE:

14 Q. Lieutenant, after you obtained the information from
15 Mr. Bates's phone and created this extraction, what did you do
16 with his phone specifically?

17 A. It was placed back in property and evidence.

18 Q. Okay. Since that time have you accessed his phone for any
19 other reason?

20 A. No.

21 Q. With regard to Government Exhibit No. 18, the forensic
22 copy of that phone, what did you do with that information?

23 A. I gave it to Deputy Miller.

24 Q. Did you look through that information?

25 A. No.

1 Q. Did -- Other than confirming that it matched?

2 A. True. Yes. I didn't -- I didn't look through the files
3 particularly. I just saw that the extraction was complete.

4 Q. Were you asked to perform any analysis on what was
5 contained on Mr. Bates's phone as it relates to looking through
6 that extraction?

7 A. No.

8 Q. Didn't search his texts or his web history or anything of
9 that nature?

10 A. No.

11 Q. That wasn't your responsibility?

12 A. Correct.

13 Q. After you completed that work, you then I think you
14 testified provided the extraction to Deputy Miller for him to
15 do what he wanted to do with it?

16 A. Correct.

17 Q. Okay. Did you do any further work as it relates to this
18 investigation after you completed the forensic extraction of
19 Mr. Bates's phone?

20 A. No, I didn't.

21 MR. KLEINE: I don't have any further questions for
22 this witness at this time, Your Honor. Thank you.

23 THE COURT: Will there be any cross-examination of
24 this witness?

25 MR. SHAPIRO: Judge, I have no cross-examination of

1 Lieutenant Kovarik.

2 THE COURT: Okay. Do you think it might be a few
3 minutes to take --

4 MR. SHAPIRO: No, I don't have any questions.

5 THE COURT: Oh, you don't have any.

6 MR. SHAPIRO: Yes, sir.

7 THE COURT: I'm sorry.

8 MR. SHAPIRO: No, sir. My apologies. No
9 cross-examination.

10 THE COURT: No cross-examination. Okay.

11 Officer -- Well, let me ask the prosecution. May this
12 witness be released?

13 MR. KLEINE: Yes, Your Honor.

14 THE COURT: Okay. Same from the defense?

15 MR. SHAPIRO: Yes, Your Honor.

16 THE COURT: Okay. Officer, your testimony is
17 concluded. I just remind you not to discuss your testimony
18 with any other witness in this case. You may leave. And I
19 don't remember if you had a mask on when you came in. You're
20 required to have a mask out in the atrium, so if you need one,
21 just grab one in that pile right there.

22 THE WITNESS: All right. Thank you.

23 THE COURT: You bet. Thank you.

24 At this point in time, will there be any additional
25 witnesses from the prosecution?

1 MS. SMITH: Yes, Your Honor. We intend to call --
2 recall Deputy Miller to the stand.

3 THE COURT: Okay. Well, at this point in time, given
4 we're at 4:30 p.m., what I'm going to do is we're going to
5 break for the day.

6 So at this point in time, I would just remind the jury of
7 my prior admonition that you're not to talk to anyone about
8 this case, including each other. You're not to text about it,
9 you're not to get on the Internet and search about this case,
10 stay away from the press. I don't know if this case will be
11 reported in the press but it might be.

12 So I remind you to do that. I just want to remind you of
13 all that. So at this point in time -- I do want you back here
14 about five minutes till nine in the morning tomorrow to
15 continue this trial. So I thank you for your attention today.

16 At this point in time, I would invite everyone to please
17 rise as the jury is released.

18 (Jury out at 4:33 p.m.)

19 THE COURT: You all may be seated.

20 At this point in time, if the prosecution is willing, I
21 understand you're going to recall Deputy Miller. What -- what
22 other sort of timing and planning purposes -- is there anything
23 else you intend to do, or if you don't wish to say so, you can
24 say that too.

25 MS. SMITH: There's potentially one additional

1 witness, Your Honor, but she would be a short witness.

2 THE COURT: Okay. At this point in time. And if
3 you're willing to say from the defense, is there any change in
4 your plans not to call any witnesses?

5 MR. SHAPIRO: No change at this time and I don't
6 expect there would be, Your Honor.

7 THE COURT: Okay. At this point in time, what I want
8 to say is I do think we should have a hearing at 8:30 in the
9 morning to discuss our -- our jury instructions so please be
10 prepared. I sent off the jury instructions I think last week
11 so just be prepared to state if you have any objections to the
12 ones that I prepared or any corrections. If I have any typos,
13 I entertain hearing about those too to get them corrected. And
14 also if there's any instruction I did not include into the
15 instructions that you wish to make a record on and try to
16 convince me to include it, you may do that as well.

17 So aside from that item of business -- and we'll handle
18 that tomorrow morning before our proceedings start -- is there
19 anything else we should discuss at this point in time? We'll
20 start with the prosecution.

21 MS. SMITH: Just one thing, Your Honor. In preparing
22 for closing, Mr. Kleine and I were wondering if the Court would
23 allow a split between counsel in rebuttal closing and closing.
24 So I would do closing, Mr. Kleine would do rebuttal closing.

25 THE COURT: All right. Would there be any objection

1 from the defense as to that arrangement?

2 MR. SHAPIRO: I have no problem or objection to that,
3 Your Honor.

4 THE COURT: Okay. I will allow that so --

5 MS. SMITH: Thank you.

6 THE COURT: -- that will be allowed.

7 So is there anything else that we need to hear?

8 MS. SMITH: No thank you.

9 THE COURT: Okay. From the -- from the defense is
10 there anything else that you wish to bring up?

11 MR. SHAPIRO: Not today, Your Honor. Thank you.

12 THE COURT: Okay. We'll see you tomorrow morning to
13 address the jury instructions. At this point in time, we are
14 in recess.

15 Thank you very much.

16 (Recess taken at 4:35 p.m.)

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21 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

22

23 /s/Rogene S. Schroder
Rogene S. Schroder, RDR, CRR

August 26, 2022
Date

24

25

1	I-N-D-E-X			
2		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
3	<u>WITNESSES:</u>			
4	<u>FOR THE PLAINTIFF:</u>			
5	Chad Miller	27	82	102
6	Joshua Echtinaw	109		
7	William Niemack	114		
8	Travis L. Whitten	119		
9	Nathan Kovarik	136		
10	<u>MOTIONS</u>		<u>Made</u>	<u>Ruling</u>
11	Plaintiff's motion in limine re: entrapment,			
12	Filing 46			6
13	<u>EXHIBITS:</u>		<u>Offered</u>	<u>Ruling</u>
14	1. Skip the Games home page		32	32
15	2. Skip the Games advertisement		34	34
16	3. Text message conversation between			
17	Bates and Undercover Officer		42	42
18	4. Advice of Rights Form		68	68
19	5. CD containing video of interview of			
20	Bates		69	69
21	6. CD containing DCSO surveillance video			
22	of 154th and Pacific Kum & Go		112	112
23	7. Photograph of vehicle		127	127
24	8. Photograph of passenger seat		129	130
25	9. Photograph of pills		131	131
	10. Two Fireball Cinnamon Whisky shooters		132	133

1	11. Sildenafil pills	133	133
2	12. \$200 Currency	79	79
3	13. CD containing surveillance video of		
4	189th and Pacific Kum & Go	78	78
5	14. Black iPhone	71	71
6	18. Thumb drive - extractions from iPhone	146	146
7	19. Portions of Exhibit 5 - Bates interview	69	69
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